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CUMULATIVE POCKET SUPPLEMENT

IDAHO CODE

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COMMISSIONERS

TITLES 68-73

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PUBLISHER'S NOTE

Amendments to laws and new laws enacted since the publication of the bound volume down to and including the 2014 regular session are compiled in this supplement and will be found under their appropriate section numbers.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

Idaho Reports
Pacific Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Reporter, 3rd Series
United States Supreme Court Reports, Lawyers' Edition, 2nd Series

Title and chapter analyses, in these supplements, carry only laws that have been amended or new laws. Old sections that have nothing but annotations are not included in the analyses.

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

Idaho R. Civ. P.	Idaho Rules of Civil Procedure
Idaho Evidence Rule	Idaho Rules of Evidence
Idaho R. Crim. P.	Idaho Criminal Rules
Idaho Misdemeanor Crim. Rule	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
Idaho App. R.	Idaho Appellate Rules

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USER'S GUIDE

To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first, bound volume of this set.

ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Year	Adjournment Date
2006 (E.S.)	August 25, 2006
2007	March 30, 2007
2008	April 2, 2008
2009	May 8, 2009
2010	March 29, 2010
2011	April 7, 2011
2012	March 29, 2012
2013	April 4, 2013
2014	March 20, 2014

TITLE 68

TRUSTS AND FIDUCIARIES

CHAPTER.
1. Trusts, § 68-106A.
5. Uniform Prudent Investor Act, § 68-514.
10. Uniform Principal And Income Act, §§ 68-10-409, 68-10-505.
13. Idaho Uniform Custodial Trust Act, § 68-1301.
14. Court Approved Payments or Awards to Minors or Incompetent Persons, § 68-1405.

CHAPTER 1

TRUSTS

SECTION.
68-106A. Fiduciary duty to determine equivalent value of substituted property.

68-105. Powers of trustee conferred by trust or by law.

JUDICIAL DECISIONS

Expenses.

In a dispute over trust property between the decedent's second wife and decedent's son, who were co-trustees and beneficiaries of the decedent's inter vivos trust, the magistrate court did not err in denying the son's claims on behalf of the trust against the second wife for reimbursement of expenses to the trust because both the wife and the son, as co-trustees, pursued the litigation and appeal with the belief that each was defending either the trust or the estate, and both acted within their prescribed roles as trustees to protect and defend actions and claims. Carter v. Carter (In re Carter JJC Trust), 143 Idaho 373, 146 P.3d 639 (2006).

68-106. Powers of trustees conferred by this act.

JUDICIAL DECISIONS

Analysis

Attorney fees and costs.
Sale of property.

Attorney Fees and Costs.

In a dispute over trust property between the decedent's second wife and decedent's son, who were co-trustees and beneficiaries of the decedent's inter vivos trust, the magistrate court did not err in denying the son's claims on behalf of the trust against the second wife for reimbursement of expenses to the trust because both the wife and the son, as co-trustees, pursued the litigation and appeal with the belief that each was defending either the trust or the estate, and both acted within their prescribed roles as trustees to protect and defend actions and claims. Carter v. Carter (In re Carter JJC Trust), 143 Idaho 373, 146 P.3d 639 (2006).

Sale of Property.

When a trustee, who was also a beneficiary, had a conflict of interest, the trustee had a duty to seek court approval before she sold land that belonged to the trust. Taylor v. Maile, 146 Idaho 705, 201 P.3d 1282 (2009).

Cited in: Wasden v. State Bd. of Land Comm'n, 153 Idaho 190, 280 P.3d 693 (2012).

68-106A. Fiduciary duty to determine equivalent value of substituted property. — Notwithstanding the terms of a trust instrument, if a grantor has the power to substitute property of equivalent value, a trustee has a fiduciary duty to determine that the substitute property is of equivalent value, prior to allowing the substitution.

History.
I.C., § 68-106A, as added by 2011, ch. 35, § 1, p. 78.

CHAPTER 5

UNIFORM PRUDENT INVESTOR ACT

SECTION.
68-514. Guardians and conservators.

68-502. Standard of care — Portfolio strategy — Risk and return objectives.

OPINIONS OF ATTORNEY GENERAL

Fees.
As a condition of its investment through the credit enhancement program (CEP), the endowment fund investment board (EFIB) correctly imposed fees to offset the projected loss of return to the public school endowment caused by the narrowing of investment opportunities, necessitated by the balancing of the investments represented by the CEP and the maximum long-term return to the endowment. OAG 10-1.

68-514. Guardians and conservators. — The provisions of this act shall apply to and govern any bank, trust company or individual authorized and duly appointed by a court of competent jurisdiction, to act as a guardian or conservator under the laws of the state of Idaho.

History.
I.C., § 68-514, as added by 1997, ch. 14, § 2, p. 14; am. 2012, ch. 88, § 1, p. 245.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 88, added "and conservators" to the section heading and added "or conservator" in the text.

Compiler's Notes.
The term "this act" refers to S.L. 1997, ch. 14, which is codified as §§ 27-408, 50-1013A, 59-1312, and 68-501 to 68-514.

CHAPTER 10

UNIFORM PRINCIPAL AND INCOME ACT

PART 4. ALLOCATION OF RECEIPTS DURING ADMINISTRATION OF TRUST

SECTION.
68-10-409. Deferred compensation, annuities, and similar payments.

PART 5. ALLOCATION OF DISBURSEMENTS DURING ADMINISTRATION OF TRUST

SECTION.
68-10-505. Income taxes.

PART 4. ALLOCATION OF RECEIPTS DURING ADMINISTRATION OF TRUST

68-10-409. Deferred compensation, annuities, and similar payments. — (a) In this section:

(1) "Payment" means a payment that a trustee may receive over a fixed number of years or during the life of one (1) or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer. For purposes of subsections (d), (e), (f) and (g) of this section, the term also includes any payment from any separate fund, regardless of the reason for the payment.

(2) "Separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus or stock-ownership plan.

(b) To the extent that a payment is characterized as interest, a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate the payment to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend or an equivalent payment.

(c) If no part of a payment is characterized as interest, a dividend or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income ten percent (10%) of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

(d) Except as otherwise provided in subsection (e) of this section, subsections (f) and (g) of this section apply, and subsections (b) and (c) of this section do not apply, in determining the allocation of a payment made from a separate fund to:

(1) A trust to which an election to qualify for a marital deduction under section 2056(b)(7) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. section 2056(b)(7), as amended, has been made; or

(2) A trust that qualifies for the marital deduction under section 2056(b)(5) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. section 2056(b)(5), as amended.

(e) Subsections (d), (f) and (g) of this section do not apply if and to the extent that the series of payments would, without the application of subsection (d) of this section, qualify for the marital deduction under section 2056(b)(7)(C) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. section 2056(b)(7)(C), as amended.

(f) A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this act. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

(g) If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal four percent (4%) of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under section 7520 of the Internal Revenue Code of 1986, as amended, 26 U.S.C. section 7520, as amended, for the month preceding the accounting period for which the computation is made.

(h) This section does not apply to a payment to which section 68-10-410, Idaho Code, applies.

History.

I.C., § 68-10-409, as added by 2001, ch. 261, § 2, p. 943; am. 2009, ch. 64, § 1, p. 175.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 64, added the subsection (a)(1) and (a)(2) designations; added the last sentence in subsection (a)(1); in subsection (a)(2), added "'Separate fund' includes"; in subsection (b), deleted "or" preceding "a dividend" and substituted "allocate the payment to income" for "allocate it to income"; rewrote subsection (d), which formerly read: "If, to obtain an estate tax marital deduction for a trust, a trustee must allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction"; and added subsections (d)(1) and (d)(2) and (e) through (g), redesignating former subsection (e) as subsection (h).

OFFICIAL COMMENT

Scope. Section 409 applies to amounts received under contractual arrangements that provide for payments to a third party beneficiary as a result of services rendered or property transferred to the payer. While the right to receive such payments is a liquidating asset of the kind described in Section 410 (i.e., "an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration"),

these payment rights are covered separately in Section 409 because of their special characteristics.

Section 409 applies to receipts from all forms of annuities and deferred compensation arrangements, whether the payment will be received by the trust in a lump sum or in installments over a period of years. It applies to bonuses that may be received over two or three years and payments that may last for much longer periods, including payments from an individual retirement account (IRA), deferred compensation plan (whether qualified or not qualified for special federal income tax treatment), and insurance renewal commissions. It applies to a retirement plan to which the settlor has made contributions, just as it applies to an annuity policy that the settlor may have purchased individually, and it applies to variable annuities, deferred annuities, annuities issued by commercial insurance companies, and "private annuities" arising from the sale of property to another individual or entity in exchange for payments that are to be made for the life of one or more individuals. The section applies whether the payments begin when the payment right becomes subject to the trust or are deferred until a future date, and it applies whether payments are made in cash or in kind, such as employer stock (in-kind payments usually will be made in a single distribution that will be allocated to principal under the second sentence of subsection (c)).

The 1962 Act. Under Section 12 of the 1962 Act, receipts from "rights to receive payments on a contract for deferred compensation" are allocated to income each year in an amount "not in excess of 5% per year" of the property's inventory value. While "not in excess of 5%" suggests that the annual allocation may range from zero to 5% of the inventory value, in practice the rule is usually treated as prescribing a 5% allocation. The inventory value is usually the present value of all the future payments, and since the inventory value is determined as of the date on which the payment right becomes subject to the trust, the inventory value, and thus the amount of the annual income allocation, depends significantly on the applicable interest rate on the decedent's date of death. That rate may be much higher or lower than the average long-term interest rate. The amount determined under the 5% formula tends to become fixed and remain unchanged even though the amount received by the trust increases or decreases.

Allocations Under Section 409(b). Section 409(b) applies to plans whose terms characterize payments made under the plan as dividends, interest, or payments in lieu of dividends or interest. For example, some deferred compensation plans that hold debt obligations or stock of the plan's sponsor in an account for future delivery to the person rendering the services provide for the annual payment to that person of dividends received on the stock or interest received on the debt obligations. Other plans provide that the account of the person rendering the services shall be credited with "phantom" shares of stock and require an annual payment that is equivalent to the dividends that would be received on that number of shares if they were actually issued; or a plan may entitle the person rendering the services to receive a fixed dollar amount in the future and provide for the annual payment of interest on the deferred amount during the period prior to its payment. Under Section 409(b), payments of dividends, interest or payments in lieu of dividends or interest under plans of this type are allocated to income; all other payments received under these plans are allocated to principal.

Section 409(b) does not apply to an IRA or an arrangement with payment provisions similar to an IRA. IRAs and similar arrangements are subject to the provisions in Section 409(c).

Allocations Under Section 409(c). The focus of Section 409, for purposes of allocating payments received by a trust to or between principal and income, is on the payment right rather than on assets that may be held in a fund from which the payments are made. Thus, if an IRA holds a portfolio of marketable stocks and bonds, the amount received by the IRA as dividends and interest is not taken into account in determining the principal and income allocation except to the extent that the Internal Revenue Service may require them to be taken into account when the payment is received by a trust that qualifies for the estate tax marital deduction (a situation that is provided for in Section 409(d)). An IRA is subject to federal income tax rules that require payments to begin by a particular date and be made over a specific number of years or a period measured by the lives of one or more persons. The payment right of a trust that is named as a beneficiary of an IRA is not a right to receive particular items that are paid to the IRA, but is instead the right to receive an amount determined by dividing the value of the IRA by the remaining number of years in the payment period. This payment right is similar to the right to receive a unitrust amount, which is normally expressed as an amount equal to a percentage of the value of the unitrust assets without regard to dividends or interest that may be received by the unitrust.

An amount received from an IRA or a plan with a payment provision similar to that of an IRA is allocated under Section 409(c), which differentiates between payments that are required to be made and all other payments. To

the extent that a payment is required to be made (either under federal income tax rules or, in the case of a plan that is not subject to those rules, under the terms of the plan), 10% of the amount received is allocated to income and the balance is allocated to principal. All other payments are allocated to principal because they represent a change in the form of a principal asset; Section 409 follows the rule in Section 404(2), which provides that money or property received from a change in the form of a principal asset be allocated to principal.

Section 409(c) produces an allocation to income that is similar to the allocation under the 1962 Act formula if the annual payments are the same throughout the payment period, and it is simpler to administer. The amount allocated to income under Section 409 is not dependent upon the interest rate that is used for valuation purposes when the decedent dies, and if the payments received by the trust increase or decrease from year to year because the fund from which the payment is made increases or decreases in value, the amount allocated to income will also increase or decrease.

Marital deduction requirements. When an IRA or other retirement arrangement (a "plan") is payable to a marital deduction trust, the IRS treats the plan as a separate property interest that itself must qualify for the marital deduction. IRS Revenue Ruling 2006-26 said that, as written, Section 409 does not cause a trust to qualify for the IRS' safe harbors. Revenue Ruling 2006-26 was limited in scope to certain situations involving IRAs and defined contribution retirement plans. Without necessarily agreeing with the IRS' position in that ruling, the revision to this section is designed to satisfy the IRS' safe harbor and to address concerns that might be raised for similar assets. No IRS pronouncements have addressed the scope of Code § 2056(b)(7)(C).

Subsection (f) requires the trustee to demand certain distributions if the surviving spouse so requests. The safe harbor of Revenue Ruling 2006-26 requires that the surviving spouse be separately entitled to demand the fund's income (without regard to the income from the trust's other assets) and the income from the other assets (without regard to the fund's income). In any event, the surviving spouse is not required to demand that the trustee distribute all of the fund's income from the fund or from other trust assets. Treas. Reg. § 20.2056(b)-5(f)(8).

Subsection (f) also recognizes that the trustee might not control the payments that the trustee receives and provides a remedy to the surviving spouse if the distributions under subsection (d)(1) are insufficient.

Subsection (g) addresses situations where, due to lack of information provided by the fund's administrator, the trustee is unable to determine the fund's actual income. The bracketed language is the range approved for unitrust payments by Treas. Reg. § 1.643(b)1. In determining the value for purposes of applying the unitrust percentage, the trustee would seek to obtain the value of the assets as of the most recent statement of value immediately preceding the beginning of the year. For example, suppose a trust's accounting period is January 1 through December 31. If a retirement plan administrator furnishes information annually each September 30 and declines to provide information as of December 31, then the trustee may rely on the September 30 value to determine the distribution for the following year. For funds whose values are not readily available, subsection (g) relies on Code section 7520 valuation methods because many funds described in Section 409 are annuities, and one consistent set of valuation principles should apply whether or not the fund is, in fact, an annuity.

Application of Section 104. Section 104(a) of this Act gives a trustee who is acting under the prudent investor rule the power to adjust from principal to income if, considering the portfolio as a whole and not just receipts from deferred compensation, the trustee determines that an adjustment is necessary. See Example (5) in the Comment following Section 104.

Part 5. Allocation of Disbursements During Administration of Trust

68-10-505. Income taxes. — (a) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid:

(1) From income to the extent that receipts from the entity are allocated only to income;

(2) From principal to the extent that receipts from the entity are allocated only to principal;

(3) Proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and

(4) From principal to the extent that the tax exceeds the total receipts from the entity.

(d) After applying subsections (a) through (c) of this section, the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

History.

I.C., § 68-10-505, as added by 2001, ch. 261, § 2, p. 943; am. 2009, ch. 64, § 2, p. 175.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 64, rewrote the section, revising requirements for payment of a tax on the trust's share of an entity's taxable income and revising requirements for an adjustment to income or principal due to a tax deduction received by a trust for payments made to a beneficiary.

OFFICIAL COMMENT

Taxes on Undistributed Entity Taxable Income. When a trust owns an interest in a pass-through entity, such as a partnership or S corporation, it must report its share of the entity's taxable income regardless of how much the entity distributes to the trust. Whether the entity distributes more or less than the trust's tax on its share of the entity's taxable income, the trust must pay the taxes and allocate them between income and principal.

Subsection (c) requires the trust to pay the taxes on its share of an entity's taxable income from income or principal receipts to the extent that receipts from the entity are allocable to each. This assures the trust a source of cash to pay some or all of the taxes on its share of the entity's taxable income. Subsection 505(d) recognizes that, except in the case of an Electing Small Business Trust (ESBT), a trust normally receives a deduction for amounts distributed to a beneficiary. Accordingly, subsection 505(d) requires the trust to increase receipts payable to a beneficiary as determined under subsection (c) to the extent the trust's taxes are reduced by distributing those receipts to the beneficiary.

Because the trust's taxes and amounts distributed to a beneficiary are interrelated, the trust may be required to apply a formula to determine the correct amount payable to a beneficiary. This formula should take into account that each time a distribution is made to a beneficiary, the trust taxes are reduced and amounts distributable to a beneficiary are increased. The formula assures that after deducting distributions to a beneficiary, the trust has enough to satisfy its taxes on its share of the entity's taxable income as reduced by distributions to beneficiaries.

Example (1)— Trust T receives a Schedule K-1 from Partnership P reflecting taxable income of $1 million. Partnership P distributes $100,000 to T, which allocates the receipts to income. Both Trust T and income Beneficiary B are in the 35 percent tax bracket.

Trust T's tax on $1 million of taxable income is $350,000. Under Subsection (c) T's tax must be paid from income receipts because receipts from the entity are allocated only to income. Therefore, T must apply the entire $100,000 of income receipts to pay its tax. In this case, Beneficiary B receives nothing.

Example (2) — Trust T receives a Schedule K-1 from Partnership P reflecting taxable income of $1 million. Partnership P distributes $500,000 to T, which allocates the receipts to income. Both Trust T and income Beneficiary B are in the 35 percent tax bracket.

Trust T's tax on $1 million of taxable income is $350,000. Under Subsection (c), T's tax must be paid from income receipts because receipts from P are allocated only to income. Therefore, T uses $350,000 of the $500,000 to pay its taxes and distributes the remaining $150,000 to B. The $150,000 payment to B reduces T's taxes by $52,500, which it must pay to B. But the $52,500 further reduces T's

taxes by $18,375, which it also must pay to B. In fact, each time T makes a distribution to B, its taxes are further reduced, causing another payment to be due B.

Alternatively, T can apply the following algebraic formula to determine the amount payable to B:

D = (C-R*K)/(1-R)

D = Distribution to income beneficiary
C = Cash paid by the entity to the trust
R = tax rate on income
K = entity's K-1 taxable income

Applying the formula to Example (2) above, Trust T must pay $230,769 to B so that after deducting the payment, T has exactly enough to pay its tax on the remaining taxable income from P.

Taxable Income per K-1	1,000,000
Payment to beneficiary	230,769[1]
Trust Taxable Income	$ 769,231
35 percent tax	269,231
Partnership Distribution	$ 500,000
Fiduciary's Tax Liability	(269,231)
Payable to the Beneficiary	$ 230,769

In addition, B will report $230,769 on his or her own personal income tax return, paying taxes of $80,769. Because Trust T withheld $269,231 to pay its taxes and B paid $80,769 taxes of its own, B bore the entire $350,000 tax burden on the $1 million of entity taxable income, including the $500,000 that the entity retained that presumably increased the value of the trust's investment entity.

If a trustee determines that it is appropriate to so, it should consider exercising the discretion granted in UPIA section 506 to adjust between income and principal. Alternatively, the trustee may exercise the power to adjust under UPIA section 104 to the extent it is available and appropriate under the circumstances, including whether a future distribution from the entity that would be allocated to principal should be reallocated to income because the income beneficiary already bore the burden of taxes on the reinvested income. In exercising the power, the trust should consider the impact that future distributions will have on any current adjustments.

CHAPTER 13

IDAHO UNIFORM CUSTODIAL TRUST ACT

SECTION.
68-1301. Definitions.

68-1301. Definitions. — As used in this chapter:

(1) "Adult" means an individual who is at least eighteen (18) years of age.

(2) "Beneficiary" means an individual for whom property has been transferred to or held under a declaration of trust by a custodial trustee for the individual's use and benefit under this chapter.

(3) "Conservator" means a person appointed or qualified by a court to manage the estate of an individual or a person legally authorized to perform substantially the same functions.

(4) "Court" means the district court of this state.

(5) "Custodial trust property" means an interest in property transferred to or held under a declaration of trust by a custodial trustee under this chapter and the income from and proceeds of that interest.

(6) "Custodial trustee" means a person designated as trustee of a custodial trust under this chapter or a substitute or successor to the person designated.

(7) "Guardian" means a person appointed or qualified by a court as a guardian of an individual, including a limited guardian, but not a person who is only a guardian ad litem.

(8) "Incapacitated" means lacking the ability to manage property and

[1] D = (C-R*K)/(1-R) = (500,000 - 350,000)/(1 - .35) = $230,769. (D is the amount payable to the income beneficiary, K is the entity's K-1 taxable income, R is the trust ordinary tax rate, and C is the cash distributed by the entity).

business affairs effectively by reason of mental illness, mental disability, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, disappearance, minority, or other disabling cause.

(9) "Legal representative" means a personal representative or conservator.

(10) "Member of the beneficiary's family" means a beneficiary's spouse, descendant, stepchild, parent, stepparent, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, joint venture, association, or any other legal or commercial entity.

(12) "Personal representative" means an executor, administrator, or special administrator of a decedent's estate, a person legally authorized to perform substantially the same functions, or a successor to any of them.

(13) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(14) "Transferor" means a person who creates a custodial trust by transfer or declaration.

(15) "Trust company" means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

History.
I.C., § 68-1301, as added by 1989, ch. 230, § 1, p. 547; am. 2010, ch. 235, § 67, p. 542.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 235, substituted "mental disability" for "mental deficiency" in subsection (8).

CHAPTER 14

COURT APPROVED PAYMENTS OR AWARDS TO MINORS OR INCOMPETENT PERSONS

SECTION.
68-1405. Special needs trusts — Requirements — Jurisdiction of court — Court orders.

68-1402. Order directing payment of expenses, costs and fees.

JUDICIAL DECISIONS

Notice And Hearing.
In a case involving medical payments made by Medicaid for the treatment of an incompetent, the court should have determined the department of health and welfare's entitlement to reimbursement at the time the compromise was presented to the court for approval, which could not be done without affording the department notice and an opportunity to be heard on the matter. State Dep't of Health & Welfare v. Hudelson (In re Hudelson), 146 Idaho 439, 196 P.3d 905 (2008), overruled on other grounds, Verska v. St. Alphonsus Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

68-1405. Special needs trusts — Requirements — Jurisdiction of court — Court orders. — (1) If a court orders that money of a minor or incompetent person be paid to a special needs trust, the terms of the trust shall be reviewed and approved by the court and shall satisfy the requirements of this section. The trust shall be subject to the continuing jurisdiction of the court, and is subject to court supervision to the extent determined by the court. The court may transfer jurisdiction to the court in the county where the minor or incompetent person resides.

(2) A special needs trust may be established and continued under this section only if the court determines all of the following:

(a) That the minor or incompetent person has a disability that substantially impairs the individual's ability to provide for the individual's own care or custody;

(b) That the minor or incompetent person is likely to have special needs that will not be met without the trust; and

(c) That money to be paid to the trust does not exceed the amount that appears reasonably necessary to meet the special needs of the minor or incompetent person.

(3) If at any time it appears that:

(a) Any of the requirements of this section are not satisfied or the trustee refuses without good cause to make payments from the trust for the special needs of the beneficiary; and

(b) That the Idaho department of health and welfare or a county or city in this state has a claim against trust property, then the Idaho department of health and welfare, the county or the city may petition the court for an order terminating the trust.

(4) A court order for payment of money or property to a special needs trust shall include a provision that all statutory liens properly perfected at the time of the court's order, and in favor of the Idaho department of health and welfare or any county or city of this state, shall be satisfied first.

History.

I.C., § 68-1405, as added by 1995, ch. 214, § 1, p. 742; am. 2010, ch. 235, § 68, p. 542.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 235, deleted "and constitutes a substantial handicap" from the end of paragraph (2)(a).

TITLE 69

WAREHOUSES

CHAPTER.
2. Bonded Warehouse Law, §§ 69-262, 69-264.
5. Commodity Dealer Law, § 69-503.

CHAPTER 2

BONDED WAREHOUSE LAW

SECTION.
69-262. Proof of claims — Procedure — Hearing — Inspection of warehouse.
69-264. Minimum balance — Subsequent payments.

69-262. Proof of claims — Procedure — Hearing — Inspection of warehouse. — In the event a warehouse or dealer fails, as defined in section 69-202(8), Idaho Code, the department shall process the claims of producers who have paid or owe assessments as required by this chapter. Claims against a failed warehouse or dealer shall include written evidence disclosing a storage obligation or a sale or delivery of commodities.

(1) The department shall give notice and provide a reasonable time of not less than thirty (30) days and not more than sixty (60) days to producers to file their written verified claims, including any written evidence, with the department.

(2) The department shall investigate each claim and prepare a staff report and recommendation as to the validity and amount of each claim. The department shall provide a copy of the staff report and recommendation to the commodity indemnity fund advisory committee, and make available for review by the advisory committee any documentation upon which the department relied in preparing the staff report and recommendation. No later than two (2) weeks following issuance of the staff report and recommendation, the advisory committee shall provide the director with the committee's written comments regarding the staff report, recommendation and payment of claims from the fund.

(3) Following the receipt of the staff report, recommendation and the commodity indemnity fund advisory committee's written comments, if any, the director shall issue a determination regarding the validity and amount of each claim.

(4) The director shall notify each claimant, the warehouseman or dealer, and the advisory committee of the department's determination as to the validity and amount of each claimant's claim. A claimant or warehouseman or dealer may request a hearing on the department's determination within twenty (20) days of receipt of written notification and a hearing shall be held by the department pursuant to chapter 52, title 67, Idaho Code. Upon determining the amount and validity of the claim, the director shall pay to the claimant an amount equal to ninety percent (90%) of the approved claim

from the commodity indemnity fund. Prior to any payment from the fund to a claimant, the claimant shall be required to subrogate and assign his right to recover from any other source. The department may then pay up to ninety percent (90%) of the approved claim to the claimant. The department shall have a priority claim for that amount. The claimant shall be entitled to seek recovery of the remaining ten percent (10%) which was not originally assigned to the department. For the purpose of determining the amount of the producer's claim, the value of a producer's commodity shall be the lesser of: (a) the value of the commodity on the date the director declared the warehouse or dealer to have failed or to have failed to comply with the provisions of this chapter or rules promulgated thereunder; (b) the contract price as listed on a valid contract; or (c) the value of the commodity represented on the contract on the date the contract was signed. The value shall be determined by a survey of the available market price reports or markets of similar facilities within the same geographic location as the failed facility.

(5) The department may inspect and audit a failed warehouseman or dealer. In the event of a shortage, the department shall determine each producer's pro rata share of available commodities and the deficiency shall be considered as a claim of the producer. Each type of commodity shall be treated separately for the purpose of determining shortages.

(6) The director shall not approve or pay any claim made on the commodity indemnity fund if the claim is based on losses resulting from the deposit, sale or storage of commodities in an unlicensed warehouse or dealer.

(7) The fund shall not be liable for claims filed against a warehouse or dealer in good standing who has voluntarily relinquished their license if such claims are not filed with the department within six (6) months of the closing.

(8) The fund shall not be liable for claims that result from losses due to uninsurable physical perils.

History.

I.C., § 69-262, as added by 1988, ch. 350, § 2, p. 1033; am. 1989, ch. 320, § 7, p. 828; am. 1990, ch. 183, § 10, p. 399; am. 1991, ch. 223, § 3, p. 532; am. 1999, ch. 203, § 2, p. 547; am. 2001, ch. 304, § 13, p. 1102; am. 2002, ch. 259, § 43, p. 756; am. 2009, ch. 39, § 1, p. 112; am. 2014, ch. 285, § 2, p. 723.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 39, added subsection (6).

The 2014 amendment, by ch. 285, added present subsections (2) and (3) and redesignated the subsequent subsections accordingly.

69-264. Minimum balance — Subsequent payments. — The minimum balance in the commodity indemnity fund, which shall be used exclusively for purposes of paying claimants pursuant to this chapter and chapter 5, title 69, Idaho Code, shall be two hundred fifty thousand dollars ($250,000). At no time shall the balance be allowed to fall below the minimum balance. The director may pay claims, on a pro rata basis if

necessary, until the minimum balance is reached. If the director cannot fully pay a claim before the minimum balance is reached, he shall, when the commodity indemnity fund contains sufficient funds, pay off the claim. After three (3) years from the date a claim is approved, the fund shall not be liable for any unpaid amounts.

History.
I.C., § 69-264, as added by 1989, ch. 320, § 9, p. 828; am. 2001, ch. 304, § 15, p. 1102; am. 2002, ch. 259, § 45, p. 756; am. 2009, ch. 39, § 2, p. 112.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 39, added the last sentence.

CHAPTER 5
COMMODITY DEALER LAW

SECTION.
69-503. License requirements — Financial responsibility.

69-503. License requirements — Financial responsibility. — (1) A person shall not engage in the business of a commodity dealer in this state without having obtained a license issued by the department.

(2) The type of license required shall be determined as follows:

(a) A class 1 license is required if the commodity dealer purchases agricultural commodities by credit-sale contract or if the value of the agricultural commodities purchased by the commodity dealer from producers during the previous twelve (12) month period exceeds two hundred and fifty thousand dollars ($250,000), or if the value of the agricultural commodities expected to be purchased by the commodity dealer from the producers during the succeeding twelve (12) month period will exceed two hundred and fifty thousand dollars ($250,000). Any other commodity dealer may elect to be licensed as a class 1 commodity dealer.

(b) A class 2 license is required for any commodity dealer if the value of the agricultural commodities purchased by the commodity dealer from producers during the previous twelve (12) month period exceeds ten thousand dollars ($10,000) and is less than two hundred and fifty thousand dollars ($250,000), or if the value of the agricultural commodities expected to be purchased by the commodity dealer from producers during the succeeding twelve (12) month period will be more than ten thousand dollars ($10,000) but less than two hundred and fifty thousand dollars ($250,000). A class 2 licensee whose purchases from producers exceed two hundred and fifty thousand dollars ($250,000) in value during any twelve (12) month period shall immediately apply for a class 1 license. If a class 1 license is denied, the person shall immediately cease doing business as a commodity dealer.

(3) An application for a license to engage in business as a commodity

dealer shall be filed with the department and shall be on a form prescribed by the department. A separate license is required for each location at which records are maintained for transactions of the commodity dealer.

(4) A license application shall include the following:

(a) The name of the applicant;

(b) The names of the officers and directors if the applicant is a corporation;

(c) The names of the partners if the applicant is a partnership;

(d) The location of the principal place of business; and

(e) Any other reasonable information the department finds necessary to carry out the provisions and purposes of this chapter.

(5) A license applicant shall further provide a sufficient and valid bond as specified in section 69-506, Idaho Code.

(6) A license applicant shall further provide a complete financial statement setting forth the applicant's assets, liabilities and net worth. This financial statement shall be prepared by an independent certified public accountant or a licensed public accountant according to generally accepted accounting principles. The commodity dealer shall have and maintain current assets equal to or greater than current liabilities. Assets shall be shown at original cost less depreciation. Upon written request filed with the department, the director may allow asset valuations in accordance with a competent appraisal.

(7) In order to receive and retain a commodity dealer's license the following additional conditions must be satisfied:

(a) For a class 1 license a commodity dealer shall have and maintain a net worth of at least fifty thousand dollars ($50,000) or maintain a bond in the amount of two thousand dollars ($2,000) for each one thousand dollars ($1,000) or fraction thereof of net worth deficiency; however, a person shall not be licensed as a class 1 commodity dealer if the person has a net worth of less than twenty-five thousand dollars ($25,000). A bond submitted for purposes of this subsection shall be in addition to any bond otherwise required under the provisions of this chapter.

(b) For a class 2 license a commodity dealer shall have and maintain a net worth of at least twenty-five thousand dollars ($25,000) or maintain a bond in the amount of two thousand dollars ($2,000) for each one thousand dollars ($1,000) or fraction thereof of net worth deficiency; however, a person shall not be licensed as a class 2 commodity dealer if the person has a net worth of less than ten thousand dollars ($10,000). A bond submitted for purposes of this subsection shall be in addition to any bond otherwise required under the provisions of this chapter.

(8) The department may require additional information or verification regarding the financial resources of the applicant and the applicant's ability to pay producers for agricultural commodities purchased from them.

(9) Any commodity dealer that accepts physical delivery of a commodity purchased directly from producers, for which the producers have not been paid, must insure the value of all commodities in his possession at full market price for insurable physical perils until all liabilities to producers have been paid.

History.

I.C., § 69-503, as added by 1982, ch. 94, § 2, p. 176; am. 1983, ch. 116, § 2, p. 248; am. 1990, ch. 184, § 2, p. 407; am. 2009, ch. 37, § 1, p. 107.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 37, in subsection (2)(b), substituted "or if the value" for "and if the value" in the first sentence and inserted "period" in the second sentence; and added subsection (9).

TITLE 70

WATERCOURSES AND PORT DISTRICTS

CHAPTER.
12. Port Districts — Election of Port Commissioners, §§ 70-1210, 70-1215, 70-1217, 70-1219, 70-1220.

CHAPTER.
22. County-Based or City-Based Intermodal Commerce Authority, §§ 70-2201 — 70-2206, 70-2210, 70-2211, 70-2213.

CHAPTER 12

PORT DISTRICTS — ELECTION OF PORT COMMISSIONERS

SECTION.
70-1210. Election procedure — Supplies.
70-1215. Additional elections.
70-1217. Additional elections — Polling places.
70-1219. Elections — Canvass of vote.
70-1220. Elections — expenses.

70-1210. Election procedure — Supplies. — Such general election shall be conducted by the county clerk according to the provisions of chapter 14, title 34, Idaho Code.

History.
1969, ch. 55, § 23, p. 144; am. 1995, ch. 118, § 105, p. 417; am. 2009, ch. 341, § 155, p. 993.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 341, rewrote the section to the extent that a detailed comparison is impracticable.

Effective Dates.
Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

70-1215. Additional elections. — Additional elections within any port district may be held at such times and for the submission of such propositions or proposals as the port commission may by resolution prescribe, subject to the limitations provided in section 34-106, Idaho Code. Such elections shall be conducted by the county clerk in accordance with the general election laws of the state, including chapter 14, title 34, Idaho Code.

History.
1969, ch. 55, § 28, p. 144; am. 1995, ch. 118, § 107, p. 417; am. 2009, ch. 341, § 156, p. 993.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 341, inserted "by the county clerk" in the last sentence.

Effective Dates.
Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

70-1217. Additional elections — Polling places. — For such additional elections, there shall be not less than one (1) polling place within each port commissioner district. It shall be the duty of the county commissioners at least twenty (20) days before all special elections, to designate by resolution the polling places for such special election, and the county clerk shall appoint election officials for each polling place.

History.
1969, ch. 55, § 30, p. 144; am. 1995, ch. 118, § 108, p. 417; am. 2009, ch. 341, § 157, p. 993.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 341, in the last sentence, substituted "county commissioners" for "port commissioners" and "and the county clerk shall appoint election officials" for "and to appoint three (3) election officials."

Effective Dates.
Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

70-1219. Elections — Canvass of vote. — The returns of all port district elections shall be canvassed by the county commissioners, who shall meet and proceed to canvass the same in accordance with the provisions of chapter 12, title 34, Idaho Code, and shall thereupon declare the results.

History.
1969, ch. 55, § 32, p. 144; am. 2009, ch. 341, § 158, p. 993.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 341, rewrote the section to the extent that a detailed comparison is impracticable.

Effective Dates.
Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

70-1220. Elections — expenses. — All expenses of elections for the formation of a port district and annexations thereto, and any other port district elections, shall be paid by the county or counties holding such election, and such expenditure is hereby declared to be for a county purpose.

History.
1969, ch. 55, § 33, p. 144; am. 2009, ch. 341, § 159, p. 993.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 341, inserted "and any other port district elections" and deleted the last sentence, which read: "The port district shall bear the expenses or the proportional share of the expense, if held in conjunction with other elections, of all port district elections."

Effective Dates.
Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

CHAPTER 22

COUNTY-BASED OR CITY-BASED INTERMODAL COMMERCE AUTHORITY

SECTION.
70-2201. County-based or city-based intermodal commerce authority authorized.
70-2202. Purpose — Public and government functions.
70-2203. Establishment and abolishment.
70-2204. Commissioners.
70-2205. Cooperation of county or city.
70-2206. General powers of a county-based or city-based intermodal commerce authority.
70-2210. Property — Disposal.
70-2211. Bonds and obligations.
70-2213. Federal, state and local money.

70-2201. County-based or city-based intermodal commerce authority authorized. — A county-based or city-based intermodal commerce authority, hereinafter referred to as the intermodal authority, is hereby authorized to acquire, construct, maintain, operate, develop and regulate rail, truck, and other on-land transfer and terminal facilities, buildings, warehouses and storage facilities, manufacturing, industrial and economic development facilities and services, reasonably incident to a modern, efficient and competitive land-based port, and may be established according to this chapter in any county or incorporated city.

History.
I.C., § 70-2201, as added by 2004, ch. 353, § 1, p. 1053; am. 2011, ch. 37, § 2, p. 87.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 37, inserted "or city-based" in the section heading, substituted "A county-based or city-based intermodal" for "The county-based intermodal" at the beginning of the paragraph, and inserted "or incorporated city" at the end.

70-2202. Purpose — Public and government functions. — The purposes of a county-based or city-based intermodal authority are to:

(1) Promote, stimulate and advance the commerce, economic development, and prosperity of its jurisdiction and of the state;

(2) Endeavor to increase the volume of commerce within the jurisdiction of the county or city through planning, advertising, acquisition, establishment, development, construction, improvement, maintenance, operation, regulation, and protection of transportation, storage, and other facilities that promote economic handling of commerce;

(3) Cooperate and act in conjunction with other organizations, either public or private, in the development of commerce, industry, manufacturing, services, natural resources, agriculture, livestock, recreation, and other economic activity in the state; and

(4) Support the creation, expansion, modernization, retention, and relocation of new and existing businesses and industries, and assist in and support the growth of all kinds of economic activity that will tend to promote commerce and business development, maintain the economic stability and prosperity of its jurisdiction and of the state.

History.
I.C., § 70-2202, as added by 2004, ch. 353, § 1, p. 1053; am. 2011, ch. 37, § 3, p. 87.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 37, inserted "or city-based" in the introductory paragraph, and substituted "county or city" for "county-based intermodal commerce authority" in subsection (2).

70-2203. Establishment and abolishment. — (1) There is hereby created in each county and incorporated city an independent public body, corporate and politic, to be known as an intermodal commerce authority.

(2) No intermodal commerce authority and no county or city shall exercise the authority hereafter conferred by this chapter until after the county commissioners or city council members, after a public hearing, have adopted a resolution finding that:

(a) There are conditions in the county or city which will be benefited by the intermodal commerce authority to further the purposes set forth in section 70-2202, Idaho Code; and

(b) The county commissioners or city council members have reason to believe that the citizens of the county or city are supportive of the intermodal commerce authority.

(3) Upon the county or city making the findings set forth in subsection (2) of this section, the intermodal commerce authority is authorized to transact the business and exercise the powers hereunder by a board of commissioners to be appointed or designated as provided in section 70-2204, Idaho Code.

(4) After the establishment of an intermodal authority, any county or city may by resolution or ordinance, after a public hearing, abolish the intermodal authority provided that the payment of any bonds or other obligations of the intermodal authority shall not be adversely affected by such action.

(5) Notwithstanding any other provision of this section to the contrary, any intermodal authority existing as of July 1, 2006, is hereby validated.

History.
I.C., § 70-2203, as added by 2004, ch. 353, § 1, p. 1053; am. 2005, ch. 364, § 1, p. 1152; am. 2006, ch. 75, § 1, p. 229; am. 2011, ch. 37, § 4, p. 87.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 37, in subsection (1), inserted "and incorporated city" and substituted "an intermodal" for "a local county-based intermodal"; inserted "or city" following "county" in subsections (2), (3), and (4); inserted "or city council members" in the introductory paragraph of subsection (2) and paragraph (2)(b); in subsection (4), substituted "intermodal authority" for "county-based intermodal commerce authority" near the middle and inserted "intermodal" near the end; and deleted "county-based" preceding "intermodal authority" in subsection (5).

70-2204. Commissioners. — (1) The powers of each intermodal authority are vested in the commissioners thereof. The resolution or ordinance setting forth the findings as provided in section 70-2203(2), Idaho Code,

shall create the authority and shall include provisions for appointing a board of not fewer than three (3) commissioners for the authority to staggered terms and requiring bylaws for governance of the authority. A majority of the commissioners of an authority constitutes a quorum for the purpose of conducting business of the authority and exercising its powers for all other purposes. Action may be taken by the intermodal authority upon a vote of not less than a majority of the commissioners present for a meeting of the authority.

(2) Each intermodal authority must elect a chairman and vice-chairman from among the commissioners at a time and for terms as set out in the respective resolution or ordinance.

(3) An intermodal authority may employ such other officers, agents, and employees, permanent or temporary, as it may require. Commissioners shall determine necessary qualifications, duties and compensation for officers, agents and employees. An intermodal authority may delegate to one (1) or more of its agents or employees such powers or duties as it considers proper.

(4) A commissioner of an intermodal authority is entitled to receive reimbursement for expenses for travel and the discharge of his or her duties according to the policies of the governing body.

(5) For inefficiency or neglect of duty or misconduct in office, a commissioner may be removed only after a hearing and after such commissioner has been given a copy of the charges at least ten (10) days prior to such hearing and has had the opportunity to be heard in person or by counsel.

(6) Each commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the county or the city clerk, as appropriate, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

History.
I.C., § 70-2204, as added by 2004, ch. 353, § 1, p. 1053; am. 2006, ch. 75, § 2, p. 229; am. 2011, ch. 37, § 5, p. 87.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 37, inserted "intermodal" in the first sentence of subsection (1); substituted "Each intermodal authority" for "Each local county-based intermodal commerce authority" at the beginning of subsection (2); and inserted "or the city clerk, as appropriate" in subsection (6).

70-2205. Cooperation of county or city. — (1) For the purpose of cooperating in the planning, establishment, construction or operation of an intermodal authority or any of its facilities, any governing body of the respective county or city for which an intermodal authority has been created may, upon such terms, with or without consideration, as it may determine:

(a) Dedicate, sell, convey or lease any of its interest in any property or facility or grant easements, licenses, or any other rights or privileges therein to the intermodal authority;

(b) Cooperate with the intermodal authority in the planning of an intermodal authority and its facilities; and

(c) Enter into agreements with the intermodal authority respecting

action to be taken by the county or city pursuant to the provisions of this section.

(2) After a public hearing, any sale, conveyance, lease or agreement provided for in this section may be made by a public body.

History.
I.C., § 70-2205, as added by 2004, ch. 353, § 1, p. 1053; am. 2006, ch. 75, § 3, p. 229; am. 2011, ch. 37, § 6, p. 87.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 37, substituted "county or city" for "county" in the section heading and twice in the text.

70-2206. General powers of a county-based or city-based intermodal commerce authority. — An intermodal authority shall have the powers provided to it by a local county or city governing body including:

(1) Have perpetual succession unless abolished as provided in this chapter;

(2) Sue and be sued;

(3) Have a seal;

(4) Execute contracts and other instruments and take other action that may be necessary or convenient to carry out the purposes of this chapter;

(5) Plan, establish, acquire, develop, construct, purchase, enlarge, improve, modify, maintain, equip, operate, regulate and protect transportation, storage, or other facilities or other personal property necessary or convenient to carry out the purposes of this chapter;

(6) Acquire any land or interest in land. All land and other property and privileges acquired and used by or on behalf of any intermodal authority must be used for intermodal authority purposes. The property of an intermodal authority acquired or held for the purposes of this chapter is declared to be public property used for essential public and governmental purposes and, effective the date an intermodal authority acquires title to such property, it shall be exempt from all taxes of the municipality, the county, the state or any political subdivision thereof; provided, that such tax exemption shall terminate when the authority sells or otherwise disposes of such property for development to a purchaser that is not a public body entitled to tax exemption with respect to such property. As specified in this chapter, a port authority may pledge, lease, sell, or mortgage all or any part of its facilities to secure bonds or for other financing purposes;

(7) Recommend to the county or city that created it, comprehensive county or city intermodal commerce authority zoning regulations in accordance with the laws of this state and the county or city governing body; and

(8) Provide financial and other support to corporations or other business entities or organizations under the provisions of Idaho law, whose purpose is to promote, stimulate, develop and advance the economic development and prosperity of its jurisdiction and of the state and its citizens by stimulating, assisting in, and supporting the growth of all kinds of economic activity, including the creation, expansion, modernization, retention, and relocation of new and existing businesses and industry in the state, all of

which will tend to promote business development, maintain the economic stability and prosperity of the state, and thus provide maximum opportunities for employment and improvement in the standards of living of citizens of the state.

History.
I.C., § 70-2206, as added by 2004, ch. 353, § 1, p. 1053; am. 2006, ch. 75, § 4, p. 229; am. 2011, ch. 37, § 7, p. 87.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 37, inserted "or city-based" in the section heading; inserted "county or city" in the introductory paragraph; in subsection (7), inserted "or city" following the first occurrence of "county", substituted "county or city intermodal commerce authority" for "county-based intermodal commerce authority" near the middle and inserted "county or city" near the end.

70-2210. Property — Disposal. — (1) Except as may be limited by the terms and conditions of any grant, loan or agreement entered into by the intermodal authority, notwithstanding the provisions in title 31, Idaho Code, an intermodal authority may, after a public hearing, sell, lease with a provision containing the right to transfer title or otherwise dispose of any transportation, storage or other facility or other property or portion of or interest in the intermodal authority's facility or property acquired pursuant to this chapter.

(2) Notice of the public hearing shall be posted at least fourteen (14) days prior to the date of the hearing in at least one (1) conspicuous place in the county or city to be determined by the commissioners of the authority. A copy of such notice shall also be published in a daily or weekly newspaper published within such county or city in one (1) issue thereof at least fourteen (14) days prior to the date of the hearing. The place, hour and day of such hearing shall be specified in the notice.

History.
I.C., § 70-2210, as added by 2004, ch. 353, § 1, p. 1053; am. 2006, ch. 75, § 5, p. 229; am. 2011, ch. 37, § 8, p. 87.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 37, inserted "or city" following "county" twice in subsection (2).

70-2211. Bonds and obligations. — (1) An intermodal authority may borrow money for any of its lawful purposes and shall have the power to issue bonds from time to time in its discretion to finance the undertaking of any project or purpose under this chapter. Bonds shall be payable out of any revenue of the intermodal authority, including revenue derived from:

(a) Any transportation, storage or other facility;

(b) Grants or appropriations from federal, state or local governments; or

(c) Other sources.

(2) The bonds may be issued by resolution of the intermodal authority without any limitation of amount, except that bonds may not be issued at any time if the total amount of principal and interest to become due in any

year on the bonds and on any then outstanding bonds for which revenue from the same source is pledged exceeds the amount of revenue to be received in that year, as estimated in the intermodal authority order authorizing the issuance of the bonds. The intermodal authority shall take all action necessary and possible to impose, maintain, and collect rates, charges and rentals sufficient to make the revenue from the pledged source in such year at least equal to the amount of principal and interest due in that year.

(3) The bonds may be sold at public or private sale and shall bear interest at such rate or rates as the issuing intermodal authority respectively shall determine. Except as otherwise provided in this chapter, any bonds issued pursuant to this chapter by an intermodal authority shall be payable as to principal and interest solely from revenue of the intermodal authority or from particular transportation, storage or other facilities of the intermodal authority. The bonds must state on their face the applicable limitations or restrictions regarding the source from which principal and interest are payable. In no circumstance shall the bonds be payable with a property tax.

(4) Bonds issued by an intermodal authority pursuant to the provisions of this chapter are declared to be issued for an essential public and governmental purpose and together with interest thereon and income therefrom, shall be exempted from all state and local taxes.

(5) For the security of bonds, the intermodal authority may by resolution make and enter into any covenant, agreement or indenture and may exercise any additional powers authorized by a county or city. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from any revenue referred to in this chapter, prior to the payment of current costs of operation and maintenance of the facilities. As further security for the bonds, the intermodal authority, with the approval of the governing body of the county or city that created the authority, may pledge, lease, sell, mortgage, or grant a security interest in all or any portion of its intermodal authority, transportation, storage or other facilities, whether or not the facilities are financed by the bonds. The instrument effecting the pledge, lease, sale, mortgage, or security interest may contain any agreements and provisions customarily contained in instruments securing bonds, as the commissioners of the intermodal authority consider advisable. The provisions must be consistent with this chapter and are subject to and must be in accordance with the laws of this state governing mortgages, trust indentures, security agreements, or instruments. The instrument may provide that in the event of a default in the payment of principal or interest on the bonds or in the performance of any agreement contained in the proceedings authorizing the bonds or instrument, the payment or performance may be enforced by the appointment of a receiver in equity. The receiver may collect charges, rents or fees and may apply the revenue from the mortgaged property or collateral in accordance with the provisions of the instrument.

(6) Nothing in this section may be construed to limit the use of intermodal authority revenue, including federal, state and local money to make grants and loans or to otherwise provide financial and other support to a private

intermodal authority, including corporations and business entities operating under the provisions of Idaho law. The credit of the state, county or municipal governments or their agencies or authorities may not be pledged to provide financial support to the intermodal authority.

History.
I.C., § 70-2211, as added by 2004, ch. 353, § 1, p. 1053; am. 2006, ch. 75, § 6, p. 229; am. 2011, ch. 37, § 9, p. 87.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 37, in subsection (5), inserted "or city" following "county" in the first and third sentences, and substituted "intermodal authority, transportation, storage or other facilities" for "land-based port, transportation, storage or other facilities" in the third sentence.

70-2213. Federal, state and local money. — An intermodal authority may accept, receive, receipt for, and spend federal, state and local money and other public or private money made available by grant, loan or appropriation to accomplish any of the purposes of this chapter and according to conditions of the grant, loan or appropriation. All federal money accepted under this section must be accepted and spent by the authority upon terms and conditions prescribed by the United States and consistent with state law. All state money accepted under this section must be accepted and spent by the intermodal authority upon terms and conditions prescribed by the state. All county or city money accepted under this section must be accepted and spent by the intermodal authority upon terms and conditions prescribed by the governing county or city.

History.
I.C., § 70-2213, as added by 2004, ch. 353, § 1, p. 1053; am. 2011, ch. 37, § 10, p. 87.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 37, inserted "or city" following "county" twice in the last sentence.

TITLE 71
WEIGHTS AND MEASURES

CHAPTER.
2. Standards, § 71-241.
CHAPTER.
4. Licensing of Weighmasters, § 71-409.

CHAPTER 2
STANDARDS

SECTION.
71-241. Petroleum products — How sold — Measurement.

71-241. Petroleum products — How sold — Measurement. — (1) All petroleum products shall be sold by liquid measure or by net weight in accordance with the provisions of section 71-232, Idaho Code, and in accordance with regulations to be made by the director.

(2) Sellers of motor fuel within this state shall offer to prospective purchasers the option to buy the product either by gross gallons or on the assumption that the temperature of the product is sixty degrees (60°) fahrenheit or the centigrade equivalent. This purchaser option may be exercised only on an annual basis and applied only to single deliveries of eight thousand (8,000) gallons or more or the metric equivalent. Any adjustments to volumes during the temperature compensation process shall be made in accordance with the standards set by the American society of testing materials.

(3) The department of agriculture may purchase and use measuring devices for monitoring bulk deliveries.

(4) Any retail outlet offering self-dispensed motor fuels only shall, upon request of the disabled driver, provide assistance in delivering fuel into the tank of a vehicle displaying an accessible parking license or card, but this requirement shall not apply when such vehicle carries an able-bodied adult or if only one (1) attendant is on duty at the retail outlet. Disabled individuals receiving this refueling service at a self-service pump shall not be charged more than the self-service price for the fuel. Notice of the availability of this service shall be posted pursuant to the provisions of subsection (5)(b) of this section. A violation of the provisions of this subsection shall be an infraction.

(5) Any retail outlet offering both attendant-dispensed motor fuels and self-dispensed motor fuels will, during those hours that attendant-dispensed motor fuels are available, provide attendant-dispensed motor fuels at the same price as for self-dispensed motor fuels when such fuel is delivered at the self-service pump into the fuel tank of a vehicle displaying an accessible parking license or card, but this requirement shall not apply when such vehicle carries an able-bodied adult.

(a) Notification of the provisions of subsections (4) and (5) of this section shall be provided, by the Idaho transportation department, to all opera-

tors of facilities offering gasoline or other motor vehicle fuels for sale, and to every person who is issued an accessible parking plate or a disabled veterans registration plate, or other authorized designation.

(b) The following notice shall be provided by the Idaho transportation department and posted in a manner and location which is visible to any driver seeking refueling service. The notice shall be a placard in substantially the following format, printed in black except that the international accessible symbol shall be printed in blue.

WHEN THERE ARE TWO OR MORE
EMPLOYEES ON DUTY
THIS STATION WILL

PUMP YOUR GAS
Idaho Code Section 71-241

History.

1969, ch. 43, § 25, p. 108; am. 1981, ch. 337, § 1, p. 701; am. 1990, ch. 297, § 1, p. 818; am. 1999, ch. 135, § 1, p. 381; am. 2010, ch. 235, § 69, p. 542.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 235, in subsection (4) and in the introductory paragraph in subsection (5), substituted "displaying an accessible parking license or card" for "displaying a handicapped license or card"; and in paragraph (5)(a), substituted "issued an accessible parking plate or a disabled veterans registration plate" for "issued a handicapped or a disabled veterans registration plate."

CHAPTER 4

LICENSING OF WEIGHMASTERS

SECTION.

71-409. Disposition of fees.

71-409. Disposition of fees. — All fees collected by the director of the department of agriculture under the provisions of this act shall be deposited in the weights and measures dedicated fund [weights and measures inspection fund] of the state treasury.

History.

I. C. A., § 69-409, as added by 1949, ch. 155, § 1, p. 332; am. 1950 (E.S.), ch. 13, § 1, p. 24; am. 1974, ch. 18, § 246, p. 364; am. 2012, ch. 43, § 1, p. 131.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 43, substituted "in the weights and measures dedicated fund of the state treasury" for "by him in the state treasury to the credit of the general fund".

Compiler's Notes.

The term "this act" refers to S.L. 1949, ch. 155, which is codified as §§ 71-401, 71-402, and 71-404 to 71-411.

The bracketed insertion was added by the compiler to correct the name of the referenced fund. See § 71-121.

TITLE 72

WORKER'S COMPENSATION AND RELATED LAWS — INDUSTRIAL COMMISSION

PART I

CHAPTER.

1. SHORT TITLE — DEFINITIONS, § 72-102.
2. SCOPE — COVERAGE — LIABILITY, §§ 72-205, 72-208, 72-212.
3. SECURITY FOR COMPENSATION, §§ 72-301, 72-301A, 72-327.
4. BENEFITS, §§ 72-419, 72-430.
5. INDUSTRIAL COMMISSION, §§ 72-503, 72-517, 72-523, 72-528.
8. MISCELLANEOUS PROVISIONS, §§ 72-802, 72-803.
9. STATE INSURANCE FUND, §§ 72-901, 72-903 — 72-905, 72-909, 72-913 — 72-915, 72-917 — 72-925.
10. CRIME VICTIMS COMPENSATION, §§ 72-1025, 72-1026.

CHAPTER.

11. PEACE OFFICER AND DETENTION OFFICER TEMPORARY DISABILITY ACT, §§ 72-1101 — 72-1105.

PART II

13. EMPLOYMENT SECURITY LAW, §§ 72-1306, 72-1312, 72-1312A, 72-1315 — 72-1316A, 72-1318 — 72-1318B, 72-1333, 72-1336A, 72-1342, 72-1345A, 72-1346, 72-1346B, 72-1347A, 72-1347B, 72-1349 — 72-1351B, 72-1352A, 72-1361, 72-1366 — 72-1369, 72-1372, 72-1374.

PART III

15. COMMISSION FOR REAPPORTIONMENT, §§ 72-1502, 72-1504, 72-1506, 72-1507.
16. STATE DIRECTORY OF NEW HIRES, § 72-1603.

PART I

CHAPTER 1

SHORT TITLE — DEFINITIONS

SECTION.

72-102. Definitions.

72-102. Definitions. — Words and terms used in the worker's compensation law, unless the context otherwise requires, are defined in the subsections which follow:

(1) "Alien" means a person who is not a citizen, a national or a resident of the United States or Canada. Any person not a citizen or national of the United States who relinquishes or is about to relinquish his residence in the United States shall be regarded as an alien.

(2) "Balance billing" means charging, billing, or otherwise attempting to collect directly from an injured employee payment for medical services in excess of amounts allowable in compensable claims as provided by rules promulgated by the commission pursuant to section 72-508, Idaho Code.

(3) "Beneficiary" means any person who is entitled to income benefits or medical and related benefits under this law.

(4) "Burial expenses" means a sum, not to exceed six thousand dollars ($6,000) for funeral and burial or cremation, together with the actual expenses of transportation of the employee's body to his place of residence within the United States or Canada.

(5) "Commission" means the industrial commission.

(6) "Community service worker" means:

(a) Any person who has been convicted of a criminal offense, any juvenile who has been found to be within the purview of chapter 5, title 20, Idaho Code, and who has been informally diverted under the provisions of section 20-511, Idaho Code, or any person or youth who has been diverted from the criminal or juvenile justice system and who performs a public service for any department, institution, office, college, university, authority, division, board, bureau, commission, council, or other entity of the state, or any city, county, school district, irrigation district or other taxing district authorized to levy a tax or an assessment or any other political subdivision or any private not-for-profit agency which has elected worker's compensation insurance coverage for such person; or

(b) Parolees under department of correction supervision, probationers under court order or department of correction supervision and offender residents of community work centers under the direction or order of the board of correction who are performing public service or community service work for any of the entities specified in paragraph (6)(a) of this section other than the department of correction.

(7) "Compensation" used collectively means any or all of the income benefits and the medical and related benefits and medical services.

(8) "Custom farmer" means a person who contracts to supply operated equipment to a proprietor of a farm for the purpose of performing part or all of the activities related to raising or harvesting agricultural or horticultural commodities.

(9) "Death" means death resulting from an injury or occupational disease.

(10) Dependency limitations.

(a) "Adopted" and "adoption" include cases where persons are treated as adopted as well as those of legal adoption unless legal adoption is specifically provided.

(b) "Brother" and "sister" include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption.

(c) "Child" includes adopted children, posthumous children, and acknowledged illegitimate children, but does not include stepchildren unless actually dependent.

(d) "Grandchild" includes children of legally adopted children and children of stepchildren, but does not include stepchildren of children, stepchildren of stepchildren, or stepchildren of adopted children unless actually dependent.

(e) "Parent" includes stepparents and parents by adoption.

(f) "Grandparent" includes parents of parents by adoption, but does not include parents of stepparents, stepparents of parents, or stepparents of stepparents.

(11) "Disability," for purposes of determining total or partial temporary disability income benefits, means a decrease in wage-earning capacity due to injury or occupational disease, as such capacity is affected by the medical factor of physical impairment, and by pertinent nonmedical factors as provided in section 72-430, Idaho Code.

(12) "Employee" is synonymous with "workman" and means any person who has entered into the employment of, or who works under contract of

service or apprenticeship with, an employer. It does not include any person engaged in any of the excepted employments enumerated in section 72-212, Idaho Code, unless an election as provided in section 72-213, Idaho Code, has been filed. Any reference to an employee who has been injured shall, where the employee is dead, include a reference to his dependents as herein defined, if the context so requires, or, where the employee is a minor or incompetent, to his committee or guardian or next friend.

(13)(a) "Employer" means any person who has expressly or impliedly hired or contracted the services of another. It includes contractors and subcontractors. It includes the owner or lessee of premises, or other person who is virtually the proprietor or operator of the business there carried on, but who, by reason of there being an independent contractor or for any other reason, is not the direct employer of the workers there employed. If the employer is secured, it means his surety so far as applicable.

(b) "Professional employer" means a professional employer as defined in chapter 24, title 44, Idaho Code.

(c) "Temporary employer" means the employer of temporary employees as defined in section 44-2403(7), Idaho Code.

(d) "Work site employer" means the client of the temporary or professional employer with whom a worker has been placed.

(14) "Farm labor contractor" means any person or his agent or subcontractor who, for a fee, recruits and employs farm workers and performs any farm labor contracting activity.

(15) "Gender and number." The masculine gender includes the feminine and neuter; "husband" or "wife" includes "spouse"; the singular number includes plural and the plural the singular.

(16) "Income benefits" means payments provided for or made under the provisions of this law to the injured employee disabled by an injury or occupational disease, or his dependents in case of death, excluding medical and related benefits.

(17) "Independent contractor" means any person who renders service for a specified recompense for a specified result, under the right to control or actual control of his principal as to the result of his work only and not as to the means by which such result is accomplished. For the purposes of worker's compensation law, a custom farmer is considered to be an independent contractor.

(18) "Injury" and "accident."

(a) "Injury" means a personal injury caused by an accident arising out of and in the course of any employment covered by the worker's compensation law.

(b) "Accident" means an unexpected, undesigned, and unlooked for mishap, or untoward event, connected with the industry in which it occurs, and which can be reasonably located as to time when and place where it occurred, causing an injury.

(c) "Injury" and "personal injury" shall be construed to include only an injury caused by an accident, which results in violence to the physical structure of the body. The terms shall in no case be construed to include

an occupational disease and only such nonoccupational diseases as result directly from an injury.

(19) "Manifestation" means the time when an employee knows that he has an occupational disease, or whenever a qualified physician shall inform the injured worker that he has an occupational disease.

(20) "Medical and related benefits" means payments provided for or made for medical, hospital, burial and other services as provided in this law other than income benefits.

(21) "Medical services" means medical, surgical, dental or other attendance or treatment, nurse and hospital service, medicines, apparatus, appliances, prostheses, and related services, facilities and supplies.

(22) "Occupational diseases."

(a) "Occupational disease" means a disease due to the nature of an employment in which the hazards of such disease actually exist, are characteristic of, and peculiar to the trade, occupation, process, or employment, but shall not include psychological injuries, disorders or conditions unless the conditions set forth in section 72-451, Idaho Code, are met.

(b) "Contracted" and "incurred," when referring to an occupational disease, shall be deemed the equivalent of the term "arising out of and in the course of" employment.

(c) "Disablement," except in the case of silicosis, means the event of an employee's becoming actually and totally incapacitated because of an occupational disease from performing his work in the last occupation in which injuriously exposed to the hazards of such disease, and "disability" means the state of being so incapacitated.

(d) "Disablement," in the case of silicosis, means the event of first becoming actually incapacitated, because of such disease, from performing any work in any remunerative employment; and "disability" means the state of being so incapacitated.

(e) "Silicosis" means the characteristic fibrotic condition of the lungs caused by the inhalation of silicon dioxide (SiO_2) dust.

(23) "Outworker" means a person to whom articles or materials are furnished to be treated in any way on premises not under the control or management of the person who furnished them.

(24) "Person" means the state or any political subdivision thereof, or any individual, partnership, firm, association, trust, corporation, including the state insurance fund, or any representative thereof.

(25) "Physician" means medical physicians and surgeons, ophthalmologists, otorhinolaryngologists, dentists, osteopaths, osteopathic physicians and surgeons, optometrists, podiatrists, chiropractic physicians, and members of any other healing profession licensed or authorized by the statutes of this state to practice such profession within the scope of their practice as defined by the statutes of this state and as authorized by their licenses.

(26) "Provider" means any person, firm, corporation, partnership, association, agency, institution, or other legal entity providing any kind of medical services related to the treatment of an injured employee which are compensable under Idaho's worker's compensation law.

(27) "Secretary" means the secretary of the commission.

(28) "Self-insurer" means an employer who has been authorized under the provisions of this law to carry his own liability to his employees covered by this law.

(29) "State" includes any state, district, commonwealth, zone or territory of the United States or any province of Canada.

(30) "Surety" means any insurer authorized to insure or guarantee payment of worker's compensation liability of employers in any state; it also includes the state insurance fund, a self-insurer and an inter-insurance exchange.

(31) "United States," when used in a geographic sense, means the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone and the territories of the United States.

(32) "Volunteer emergency responder" means a firefighter or peace officer, or publicly employed certified personnel as that term is defined in section 56-1012, Idaho Code, who is a bona fide member of a legally organized law enforcement agency, a legally organized fire department or a licensed emergency medical service provider organization who contributes services.

(33) "Wages" and "wage earning capacity" prior to the injury or disablement from occupational disease mean the employee's money payments for services as calculated under section 72-419, Idaho Code, and shall additionally include the reasonable market value of board, rent, housing, lodging, fuel, and other advantages which can be estimated in money which the employee receives from the employer as part of his remuneration, and gratuities received in the course of employment from others than the employer. "Wages" shall not include sums which the employer has paid to the employee to cover any special expenses entailed on him by the nature of his employment.

(34) "Wages" and "wage earning capacity" after the injury or disablement from occupational disease shall be presumed to be the actual earnings after the injury or disablement, which presumption may be overcome by showing that those earnings do not fairly and reasonably represent wage earning capacity; in such a case wage earning capacity shall be determined in the light of all factors and circumstances which may affect the worker's capacity to earn wages.

(35) "Work experience student" means any person enrolled in the public school districts or public institutions of higher education of this state and who, as part of his instruction, is enrolled in a class or program for academic credit and for which the student is employed by, or works for, a private or governmental entity. The student need not receive wages from the private or governmental entity in order to be classified as a work experience student.

(36) "Worker's compensation law" or "workmen's compensation law" means and includes the worker's compensation law of this state and any like or similar law of any state, United States, territory, or province of Canada.

History.

I.C., § 72-102, as added by 1971, ch. 124, § 3, p. 422; am. 1974, ch. 208, § 1, p. 1538; am. 1978, ch. 264, § 1, p. 572; am. 1982, ch. 231, § 1, p. 608; am. 1987, ch. 49, § 1, p. 78; am. 1989, ch. 155, § 12, p. 371; am. 1990, ch. 335, § 1, p. 912; am. 1993, ch. 341, § 1, p. 1277; am. 1994, ch. 112, § 1, p. 255; am. 1994,

ch. 446, § 1, p. 1427; am. 1996, ch. 194, § 2, p. 604; am. 1997, ch. 130, § 1, p. 393; am. 1997, ch. 274, § 1, p. 799; am. 2004, ch. 149, § 1, p. 479; am. 2006, ch. 206, § 1, p. 627; am. 2008, ch. 369, § 1, p. 1009; am. 2013, ch. 46, § 1, p. 96.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 369, added subsection (32) and redesignated the subsequent subsections accordingly.

The 2013 amendment, by ch. 46, inserted "or public institutions of higher education" near the beginning of the first sentence in subsection (35).

Compiler's Notes.

The words "this law", as they appear in subsection (3), refer to S.L. 1971, ch. 124, compiled as §§ 72-101 to 72-805.

JUDICIAL DECISIONS

Analysis

Accident.
Aggravation of underlying disease.
Compensable injury.
Independent contractor.
Injury.
Out of and in course of employment.
Statutory employer.

Accident.

Denial of compensation to the employee in a workers' compensation action was proper because he had failed to prove that the heart attack he suffered while at work was an industrial accident; his cardiologist could not determine whether the attack was triggered by events occurring before or after the employee arrived at work. Henry v. Dep't of Corr., 154 Idaho 143, 295 P.3d 528 (2013).

Aggravation of Underlying Disease.

Idaho industrial commission did not err by finding that a closed head injury was related to employment where the medical evidence showed that a claimant fell and hit his head on a concrete floor during an insulin reaction; the medical evidence showed that the exertion of the claimant's usual work lowered his blood sugar, which ultimately resulted in the fall and the head injury. Hutton v. Manpower, Inc., 143 Idaho 573, 149 P.3d 848 (2006).

Aggravation of a preexisting condition may constitute an injury if it is precipitated by an accident. Fife v. Home Depot, Inc., 151 Idaho 509, 260 P.3d 1180 (2011).

Compensable Injury.

Idaho industrial commission's finding that the claimant failed to show that his herniated disc was caused by a compensable accident was not supported by substantial and competent evidence in the record. The court held that the claimant's testimony was credible because, although his descriptions as to the cause of his injury were more vague prior to the oral hearing, he consistently maintained that his injury arose from the jostling and vibrations of his forklift; the claimant's testimony was not the only evidence linking his herniated disc to March 9, 2004, as two physicians stated that the acute onset of pain that the claimant experienced on that date was consistent with a finding that his disc herniated at that time. Stevens-McAtee v. Potlatch Corp., 145 Idaho 325, 179 P.3d 288 (2008).

Independent Contractor.

Idaho industrial commission's decision that a lessor truck driver was an independent contractor rather than an employee, and, thus, ineligible to receive benefits was supported by substantial evidence and affirmed. Hernandez v. Triple Ell Transp., Inc., 145 Idaho 37, 175 P.3d 199 (2007).

Claimant injured while working for his father's tire business was an independent contractor ineligible for workers' compensation. Claimant owned his own equipment, controlled his own work, was paid as a separate business, did not have taxes withheld from his checks, and a did not receive a W-2 from the tire business. Moore v. Moore, 152 Idaho 245, 269 P.3d 802 (2011).

Injury.

Because the employee denied suffering any physical injury for much of the litigation, and the claim that she had suffered injuries to her brain was first raised much later, the industrial commission could reasonably conclude that the employer did not have knowledge that the employee suffered a physical injury

as a result of police interviews; substantial and competent evidence supported the finding that the employer did not have the knowledge required to excuse the employee's failure to give proper notice of her claim for worker's compensation benefits. Gibson v. Ada County Sheriff's Office, 147 Idaho 491, 211 P.3d 100 (2009).

The type of injury covered under workers' compensation is that caused by an accident, which results in violence to the physical structure of the body. An accident is an unexpected, undesigned, and unlooked for mishap or untoward event. The injury former employee claims was not caused by violence to the body, but rather emotional distress for termination of employment, unrelated to any physical injury. As such, it is not the type of "injury" contemplated by this section. Bollinger v. Fall River Rural Elec. Coop., Inc., 152 Idaho 632, 272 P.3d 1263 (2012).

Out of and in Course of Employment.

Claimant, who was injured when she slipped and fell while walking down a county road to return to work after relocating her car from the employee parking lot to the top of a hill in order to avoid the risk of not being able to drive up the hill on the county road due to snow, was not injured in the course of her employment; moving of the claimant's vehicle was more than a minor or inconsequential departure from her employment. Thompson v. Clear Springs Foods, 148 Idaho 697, 228 P.3d 378 (2010).

Statutory Employer.

In a personal injury and wrongful death suit by family members of employees of a contractor hired by the state to work on a highway, because the state had expressly hired the services of the contractor, and was liable to pay the employees workers compensation benefits if their direct employer did not, state was a statutory employer and was entitled to immunity under the exclusive remedy rule. Fuhriman v. State, 143 Idaho 800, 153 P.3d 480 (2007).

Statutory employers fall into two categories: category one, employers having under them contractors or subcontractors, and category two, employers under a virtual proprietor analysis. Where an employee of a subcontractor injured while working on a school roof failed to articulate a category one argument, and the facts did not support a finding that the school was a statutory employer under the category two analysis, then school was properly found not a be a statutory employer. Pierce v. Sch. Dist. #21, 144 Idaho 537, 164 P.3d 817 (2007).

Cited in: Cordova v. Bonneville County Joint Sch. Dist. No. 93, 144 Idaho 637, 167 P.3d 774 (2007); Ewing v. DOT, 147 Idaho 305, 208 P.3d 287 (2009); Liberty Northwest Ins. Corp. v. United States, 2011 U.S. Dist. LEXIS 138291 (D. Idaho Nov. 30, 2011); Izaguirre v. R&L Carriers Shared Servs., LLC, — Idaho —, 308 P.3d 929 (2013).

RESEARCH REFERENCES

A.L.R. — Right to workers' compensation for physical injury or illness suffered by claimant as result of nonsudden mental stimuli — Requisites of, and factors affecting, compensability. 13 A.L.R.6th 209.

Right to workers' compensation for injury suffered by worker en route to or from worker's home where home is claimed as "work situs." 15 A.L.R.6th 633.

Legal status of posthumously conceived child of decedent. 17 A.L.R.6th 593.

Right to workers' compensation for physical injury or illness suffered by claimant as result of sudden mental stimuli — Compensability of particular injuries and illnesses. 20 A.L.R.6th 641.

Recovery of workers' compensation for acts of terrorism. 20 A.L.R.6th 729.

Workers' compensation: Nonathlete students as covered employees. 33 A.L.R.6th 251.

CHAPTER 2

SCOPE — COVERAGE — LIABILITY

SECTION.
72-205. Public employment generally — Coverage.
72-208. Injuries not covered — Willful intention — Intoxication.
SECTION.
72-212. Exemptions from coverage.

72-201. Declaration of police power.

JUDICIAL DECISIONS

Cited in: Blake v. Starr, 146 Idaho 847, 203 P.3d 1246 (2009).

72-203. Employments covered.

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of statutory provisions exempting or otherwise restricting farm and agricultural workers from worker's compensation coverage. 40 A.L.R.6th 99.

72-204. Private employment — Coverage.

RESEARCH REFERENCES

A.L.R. — Right to workers' compensation for injury suffered by employee while driving employer's vehicle. 28 A.L.R.6th 1.

Right to workers' compensation for physical injury or illness suffered by claimant as result of nonsudden mental stimuli — Compensability under particular circumstances. 39 A.L.R.6th 445.

Right to compensation under state workers' compensation statute for injuries sustained during or as result of horseplay, joking, fooling, or the like. 41 A.L.R.6th 207.

Injury to employee as arising out of or in course of employment for purposes of state workers' compensation statute — Effect of employer-provided living quarters, room and board, or the like. 42 A.L.R.6th 61.

72-205. Public employment generally — Coverage. — The following shall constitute employees in public employment and their employers subject to the provisions of this law:

(1) Every person in the service of the state or of any political subdivision thereof, under any contract of hire, express or implied, and every official or officer thereof, whether elected or appointed, while performing his official duties, except officials of athletic contests involving secondary schools, as defined by section 33-119, Idaho Code.

(2) Every person in the service of a county, city, or any political subdivision thereof, or of any municipal corporation.

(3) Participants in the Idaho youth conservation project under the supervision of the Idaho state forester.

(4) Every person who is a volunteer emergency responder shall be deemed, for the purposes of this law, to be in the employment of the political subdivision or municipality where the department, agency or organization is organized.

(5) Every person who is a regularly enrolled volunteer member or trainee of the department of disaster and civil defense, or of a civil defense corps, shall be deemed, for the purposes of this law, to be in the employment of the state.

(6) Members of the Idaho national guard while on duty and employees of or persons providing voluntary service to an approved Idaho national guard morale, welfare, and recreational activity. No Idaho compensation benefits

shall inure to any such member, employee or volunteer or their beneficiaries for any injury or death compensable under federal law.

(7) A community service worker, as that term is defined in section 72-102, Idaho Code, is considered to be an employee in public employment for purposes of receiving worker's compensation benefits, which shall be the community service worker's exclusive remedy for all injuries and occupational diseases as provided under chapters 1 through 8, title 72, Idaho Code.

(8) Every person who participates in a youth employment program funded in whole or in part by state or federal money and administered by a state or federal agency or a nonprofit corporation or entity.

(9) A work experience student, as that term is defined in section 72-102, Idaho Code, who does not receive wages while participating in the school's work experience program shall be covered by the school district's policy or by the Idaho higher education policy.

History.

I.C., § 72-205, as added by 1971, ch. 124, § 3, p. 422; am. 1972, ch. 136, § 1, p. 302; am. 1981, ch. 190, § 1, p. 335; am. 1989, ch. 155, § 13, p. 371; am. 1989, ch. 200, § 1, p. 500; am. 1990, ch. 301, § 1, p. 830; am. 1990, ch. 335, § 2, p. 912; am. 2007, ch. 90, § 32, p. 246; am. 2008, ch. 369, § 2, p. 1013; am. 2011, ch. 42, § 1, p. 97; am. 2013, ch. 46, § 2, p. 96.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 90, substituted the first occurrence of "worker's" for "workmen's" in subsection (7); and corrected the designation of the last paragraph.

The 2008 amendment, by ch. 369, in subsection (4), substituted "a volunteer emergency responder" for "a member of a volunteer fire or police department," and inserted "agency or organization."

The 2011 amendment, by ch. 42, deleted "with the state insurance fund" from the end of subsection (9).

The 2013 amendment, by ch. 46, added "or by the Idaho higher education policy" at the end of subsection (9).

Compiler's Notes.

The words "this law" refer to S.L. 1971, ch. 124, compiled as §§ 72-101 to 72-805.

RESEARCH REFERENCES

A.L.R. — Workers' compensation: Nonathlete students as covered employees. 33 A.L.R.6th 251.

72-208. Injuries not covered — Willful intention — Intoxication. — (1) No compensation shall be allowed to an employee for injury proximately caused by the employee's willful intention to injure himself or to injure another.

(2) If intoxication is a reasonable and substantial cause of an injury, no income benefits shall be paid, except where the intoxicants causing the employee's intoxication were furnished by the employer or where the employer permits the employee to remain at work with knowledge by the employer or his supervising agent that the employee is intoxicated.

(3) "Intoxication" as used in this section means being under the influence of alcohol or of controlled substances, as defined in section 37-2701(e), Idaho Code. Provided, however, that this definition shall not include an employee's use of a controlled substance for which a prescription has been issued

authorizing such substance to be dispensed to the employee, or when such substance is dispensed directly by a physician to the employee, and where the employee's use of the controlled substance is in accordance with the instructions for use of the controlled substance.

History.
I.C., § 72-208, as added by 1971, ch. 124, § 3, p. 422; am. 1989, ch. 364, § 1, p. 912; am. 1997, ch. 274, § 2, p. 799; am. 2010, ch. 118, § 4, p. 256.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 118, updated the section reference in subsection (3).

RESEARCH REFERENCES

A.L.R. — Workers' compensation: Validity, construction, and application of statutes providing that worker who suffers workplace injury and subsequently tests positive for alcohol impairment or illegal drug use is not eligible for workers' compensation benefits. 22 A.L.R.6th 329.

72-209. Exclusiveness of liability of employer.

JUDICIAL DECISIONS

ANALYSIS

Exclusive remedy.
Scope of employment.
Third-party claims.

Exclusive Remedy.
Worker was exempt from liability toward the contractor's employee because the worker's employer was a statutory employer immune from third party liability under § 72-223(1); this immunity extended to its workers to fulfill the purpose of the Idaho worker's compensation act as to hold otherwise would undermine the entire framework of liability and immunity provided by the worker's compensation law. Blake v. Starr, 146 Idaho 847, 203 P.3d 1246 (2009).

Scope of Employment.
Passenger's negligence claim against a driver was barred by the exclusivity rule of subsection (3), where the driver and passenger were in the process of delivering a car to their employer's customer at the time of the accident. Passenger's arguments that a manager had not specifically authorized the driver to courier the vehicle and that the driver was not acting in the course of his employment because it was technically his day off were rejected. Gerdon v. Rydalch, 153 Idaho 237, 280 P.3d 740 (2012).

Third-Party Claims.
Because there was no evidence of a contract between the firefighter and the county, there could be no statutory employer relationship; therefore, workers' compensation did not preclude the firefighter's third-party suit against the county. Ruffing v. Ada County Paramedics, 145 Idaho 943, 188 P.3d 885 (2008).

RESEARCH REFERENCES

A.L.R. — Construction and application of exclusive remedy rule under state workers' compensation statutes with respect to liability for injury or death of employee as passenger in employer-provided vehicle — Requisites for, and factors affecting, applicability and who may invoke rule. 42 A.L.R.6th 545.

Construction and application of exclusive remedy rule under state workers' compensation statute with respect to liability for injury or death of employee as passenger in employer-provided vehicle — Against whom may rule

be invoked and application of rule to particular situations and employees. 43 A.L.R.6th 375.

72-210. Employer's failure to insure liability.

JUDICIAL DECISIONS

Burden of Proof.

Fact that employer failed to acquire workers' compensation insurance did not remove the plaintiff worker's burden to prove that she was entitled to benefits. Stolle v. Bennett, 144 Idaho 44, 156 P.3d 545 (2007).

72-211. Exclusiveness of employee's remedy.

JUDICIAL DECISIONS

Cited in: Blake v. Starr, 146 Idaho 847, 203 P.3d 1246 (2009).

RESEARCH REFERENCES

A.L.R. — Construction and application of exclusive remedy rule under state workers' compensation statutes with respect to liability for injury or death of employee as passenger in employer-provided vehicle — Requisites for, and factors affecting, applicability and who may invoke rule. 42 A.L.R.6th 545.

Construction and application of exclusive remedy rule under state workers' compensation statute with respect to liability for injury or death of employee as passenger in employer-provided vehicle — Against whom may rule be invoked and application of rule to particular situations and employees. 43 A.L.R.6th 375.

Exclusive remedy provision of state workers' compensation statute as applied to injuries sustained during or as the result of horseplay, joking, fooling, or the like. 44 A.L.R.6th 545.

72-212. Exemptions from coverage. — None of the provisions of this law shall apply to the following employments unless coverage thereof is elected as provided in section 72-213, Idaho Code:

(1) Household domestic service.

(2) Casual employment.

(3) Employment of outworkers.

(4) Employment of members of an employer's family dwelling in his household if the employer is the owner of a sole proprietorship or a single member limited liability company that is taxed as a sole proprietorship.

(5) Employment of members of an employer's family not dwelling in his household if the employer is the owner of a sole proprietorship, provided the family member has filed with the commission a written declaration of his election for exemption from coverage. For the purposes of this subsection, "member of an employer's family" means a natural person or the spouse of a natural person who is related to the employer by blood, adoption or marriage within the first degree of consanguinity or a grandchild or the spouse of a grandchild.

(6) Employment as the owner of a sole proprietorship; employment of a working member of a partnership or a limited liability company; employment of an officer of a corporation who at all times during the period involved owns not less than ten percent (10%) of all of the issued and

outstanding voting stock of the corporation and, if the corporation has directors, is also a director thereof.

(7) Employment for which a rule of liability for injury, occupational disease, or death is provided by the laws of the United States.

(8) Employment as a pilot of an aircraft, while actually operating an aircraft for the purpose of applying fertilizers or pesticides to agricultural crops, shall be exempt from the provisions of the worker's compensation law, provided that:

(a) The industrial commission has issued to the agent submitting the policy written approval of a policy of insurance that will provide benefits in an amount of not less than: twenty-five thousand dollars ($25,000) accidental death and dismemberment, ten thousand dollars ($10,000) medical expense payments, and five hundred dollars ($500) per month disability income for a minimum of forty-eight (48) months; and

(b) Once the policy has been approved by the industrial commission, proof of coverage for the specified pilot has been filed with the commission prior to the pilot actually operating an aircraft.

Provided however, the agent issuing the policy shall obtain approval of the policy of insurance, and proof of coverage for each pilot insured under the policy shall be filed with the commission, each calendar year. The exemption shall be effective on the date the commission receives proof of coverage for the specified pilot, but no earlier than the date written approval of the policy was issued by the commission.

(9) Associate real estate brokers and real estate salesmen. Service performed by an individual for a real estate broker as an associate real estate broker or as a real estate salesman, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

(10) Volunteer ski patrollers.

(11) Officials of athletic contests involving secondary schools, as defined in section 33-119, Idaho Code.

History.

I.C., § 72-212, as added by 1971, ch. 124, § 3, p. 422; am. 1972, ch. 20, § 1, p. 26; am. 1972, ch. 186, § 1, p. 473; am. 1974, ch. 94, § 1, p. 1193; am. 1976, ch. 285, § 1, p. 985; am. 1979, ch. 132, § 1, p. 426; am. 1981, ch. 190, § 2, p. 335; am. 1982, ch. 176, § 1, p. 464; am. 1982, ch. 244, § 1, p. 631; am. 1994, ch. 293, § 14, p. 916; am. 1996, ch. 194, § 4, p. 604; am. 1997, ch. 230, § 1, p. 671; am. 1999, ch. 214, § 1, p. 571; am. 2000, ch. 164, § 1, p. 414; am. 2006, ch. 231, § 2, p. 688; am. 2014, ch. 347, § 1, p. 868.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 347, added "if the employer is the owner of a sole proprietorship or a single member limited liability company that is taxed as a sole proprietorship" in subsection (4).

Compiler's Notes.

The term "this law" refers to S.L. 1971, chapter 124, which is generally compiled as §§ 72-101 to 72-805.

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of statutory provisions exempting or otherwise restricting farm and agricultural workers from worker's compensation coverage. 40 A.L.R.6th 99.

72-213. Election of exempt coverage.

JUDICIAL DECISIONS

Cited in: Hernandez v. Triple Ell Transp., Inc., 145 Idaho 37, 175 P.3d 199 (2007).

72-216. Contractors.

JUDICIAL DECISIONS

Analysis

Statutory employer.
Subcontractors.

Statutory Employer.

In a personal injury and wrongful death suit by family members of employees of a contractor hired by the state to work on a highway, because the state had expressly hired the services of the contractor, and was liable to pay the employees workers compensation benefits if their direct employer did not, state was a statutory employer and was entitled to immunity under the exclusive remedy rule. Fuhriman v. State, 143 Idaho 800, 153 P.3d 480 (2007).

Subcontractors.

An employer who makes use of a contractor's or subcontractor's employees qualifies as a category one statutory employer and is immune from suits in tort in case of injury to any of those employees. Ewing v. DOT, 147 Idaho 305, 208 P.3d 287 (2009).

Cited in: Hernandez v. Triple Ell Transp., Inc., 145 Idaho 37, 175 P.3d 199 (2007); Blake v. Starr, 146 Idaho 847, 203 P.3d 1246 (2009); Liberty Northwest Ins. Corp. v. United States, 2011 U.S. Dist. LEXIS 138291 (D. Idaho Nov. 30, 2011).

72-223. Third party liability.

JUDICIAL DECISIONS

Analysis

Control.
Exclusive remedy.
General contractor.
Immunity.
In general.
Subcontractors.
Subrogation.

Control.

Control does not factor into a statutory employer analysis. Fuhriman v. State, 143 Idaho 800, 153 P.3d 480 (2007).

Exclusive Remedy.

In a personal injury and wrongful death suit by family members of employees of a contractor hired by the state to work on a highway, because the state had expressly hired the services of the contractor, and was liable to pay the employees workers compensation benefits if their direct employer did not, state was a statutory employer and was entitled to immunity under the exclusive remedy rule. Fuhriman v. State, 143 Idaho 800, 153 P.3d 480 (2007).

Worker was exempt from liability from the

contractor's employee under § 72-209(3) because the worker's employer was a statutory employer immune from third party liability; this immunity extended to its workers to fulfill the purpose of the Idaho worker's compensation act as to hold otherwise would undermine the entire framework of liability and immunity provided by the worker's compensation law. Blake v. Starr, 146 Idaho 847, 203 P.3d 1246 (2009).

Under the exclusive remedy rule, an injured employee is limited to recovery in worker's compensation and cannot sue in tort. Ewing v. DOT, 147 Idaho 305, 208 P.3d 287 (2009).

General Contractor.

A category one statutory employer need not be a general contractor. Fuhriman v. State, 143 Idaho 800, 153 P.3d 480 (2007).

An employer who makes use of a contractor's or subcontractor's employees qualifies as a category one statutory employer and is immune from suits in tort in case of injury to any of those employees. Ewing v. DOT, 147 Idaho 305, 208 P.3d 287 (2009).

Immunity.

Because the school district was not a "business" in the ordinary meaning of the word, it could not be the teacher's category two employer and it was not entitled to immunity from tort suit. Cordova v. Bonneville County Joint Sch. Dist. No. 93, 144 Idaho 637, 167 P.3d 774 (2007).

Although statutory employer immunity under this section could apply to the United States, the statutory employer immunity provided for did not apply to the United States in a negligence and subrogation action filed by a worker's compensation insurer because the complaint alleged that particular Department of Defense entities were responsible for the injuries to a subcontractor's employee, but the record showed that it was the Army Corps of Engineers that contracted for the work at the base and indirectly employed the injured worker. Liberty Northwest Ins. Corp. v. United States, 2011 U.S. Dist. LEXIS 138291 (D. Idaho Nov. 30, 2011).

In General.

Because there was no evidence of a contract between the firefighter and the county, there could be no statutory employer relationship; therefore, workers' compensation did not preclude the firefighter's third-party suit against the county. Ruffing v. Ada County Paramedics, 145 Idaho 943, 188 P.3d 885 (2008).

Subcontractors.

Where the Idaho department of transportation (ITD) awarded a contract for road work, an employee of a subcontractor, injured while taking a break, was a statutory employee of the ITD for purposes of the Idaho worker's compensation act: thus, the employee's negligence suit against the ITD was barred by this section. Ewing v. DOT, 147 Idaho 305, 208 P.3d 287 (2009).

Subrogation.

Where insurance contract reduces amount to be paid to injured insured by payments awarded to the insured under the workers' compensation law, that reduction should only be by the net amount of worker's compensation benefits paid or payable to the insured: monies repaid to the state insurance fund through subrogation under this section should not be deducted from an award under the insurance contract. Cherry v. Coregis Ins. Co., 146 Idaho 882, 204 P.3d 522 (2009).

Entire proceeds of an injured worker's third party settlement were subject to subrogation, because there is no language in this section indicating that a third-party recovery is to be segregated out into its individual elements or that certain portions, such as pain and suffering, are to be protected from an employer's right of subrogation. Izaguirre v. R&L Carriers Shared Servs., LLC, — Idaho —, 308 P.3d 929 (2013).

RESEARCH REFERENCES

Idaho Law Review. — Choice of Law in Idaho: A Survey and Critique of Idaho Cases, Andrew S. Jorgensen. 49 Idaho L. Rev. 547 (2013).

CHAPTER 3

SECURITY FOR COMPENSATION

SECTION.
72-301. Security for payment of compensation.
72-301A. Alternative means of securing self-insurance.
SECTION.
72-327. Assessment — Method of calculation and proration — Time for payment.

72-301. Security for payment of compensation. — (1) Every employer shall secure the payment of compensation under this law in one (1) of the following ways:

(a) By insuring and keeping insured with a policy of worker's compensation insurance as defined in section 41-506(d), Idaho Code, the payment of compensation with any insurer, as defined in section 41-103, Idaho Code, authorized by the director of the department of insurance to transact such insurance, provided, that every public employer shall insure its liability for payment of compensation with the state insurance fund unless such fund shall refuse to accept the risk when the application for insurance is made; or

(b) An employer may become self-insured by obtaining the approval of the industrial commission, and by depositing and maintaining in a custodial account with the state treasurer money or acceptable security instruments satisfactory to the commission securing the payment by said employer of compensation according to the terms of this law. Such acceptable security instruments are bonds, treasury bills, interest-bearing notes or other obligations of the United States for which the full faith and credit of the United States is pledged for the payment of principal and interest. In lieu of such money or security instruments, the commission may allow or require such employer to file or maintain with the state treasurer a surety bond with any company authorized to transact surety insurance in Idaho. The commission shall adopt rules governing the qualifications of self-insured employers, the nature and amount of security to be deposited and maintained with the state treasurer, and the conditions under which an employer may continue to be self-insured.

(2) No insurer shall be permitted to transact worker's compensation insurance covering the liability of employers under this law unless it shall have been authorized to do business under the laws of this state and until it shall have received the approval of the commission. To the end that the workers secured under this law shall be adequately protected, the commission shall require such insurer to deposit and maintain in a custodial account with the state treasurer money or acceptable security instruments of the United States in an amount equal to the total amounts of all outstanding and unpaid compensation awards against such insurer. Acceptable security instruments are bonds, treasury bills, interest-bearing notes or other obligations of the United States for which the full faith and credit of the United States is pledged for the payment of principal and interest. In lieu of such money or security instruments, the commission may allow or require such insurer to file or maintain with the state treasurer a surety bond of some company or companies authorized to do business in this state for and in the amounts equaling the total unpaid compensation awards against such insurer.

(3) When an insurer has been placed in liquidation, any security being held in a custodial account with the state treasurer under this section shall be converted into cash and transferred into the insolvent insurer fund created in subsection (4) of this section. Such funds shall continue to be held for the purpose of securing any future claims made against the insolvent

insurer under this law or until released by the commission to the liquidator, if one exists, or to the insurer's state of domicile, as provided herein. Interest earned on moneys deposited in the insolvent insurer fund shall be credited, pro rata, to the account balance of security being held to answer claims made under this law against an insolvent insurer. Moneys deposited in the insolvent insurer fund may be used to pay the reasonable costs or expenses charged by any financial institution holding such funds on deposit for the state treasurer. Any balance in funds remaining on deposit in the insolvent insurer fund to answer the claims of an insolvent insurer after discharge of that insurer's liquidator may be transferred to the liquidator, if one still exists, or to the liquidated insurer's state of domicile, at such time as the commission determines that said security is no longer required to be held by the state treasurer for the purposes of this law.

(4) There is hereby created in the state treasury the insolvent insurer fund. Moneys in the fund are hereby continuously appropriated for the purposes set forth in the provisions of this section. Interest earned on moneys in the fund shall be returned to the fund.

(5) The approval by the commission of any insurer or self-insured employer may be withdrawn if it shall appear to the commission that workers secured thereby under this law are not fully protected.

History.

I.C., § 72-301, as added by 1971, ch. 124, § 3, p. 422; am. 1974, ch. 208, § 2, p. 1538; am. 2011, ch. 198, § 1, p. 581; am. 2014, ch. 96, § 1, p. 262.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 198, throughout the section, substituted "worker's" for "workmen's," or similar language; in subsection (1), substituted "insurer" for "surety" and inserted "as defined in section 41-103, Idaho Code"; in the last sentence in subsection (2), deleted "and regulations" following "rules"; and, in the last paragraph, substituted "insurer" for "surety," or similar language throughout, and substituted "this law" for "this act" in the second sentence.

The 2014 amendment, by ch. 96, changed the designation scheme in the section, rewrote present paragraphs (1)(b) and subsection (2), added subsections (3) and (4), and designated the last paragraph as subsection (5).

Compiler's Notes.

The term "this law" refers to S.L. 1971, ch. 124, which is generally compiled as §§ 72-101 to 72-805.

JUDICIAL DECISIONS

Analysis

Burden of proof.
Statutory employer.

Burden of Proof.

Fact that employer failed to acquire workers' compensation insurance did not remove the plaintiff worker's burden to prove that she was entitled to benefits. Stolle v. Bennett, 144 Idaho 44, 156 P.3d 545 (2007).

Statutory Employer.

In a personal injury and wrongful death suit by family members of employees of a contractor hired by the state to work on a highway, because the state had expressly hired the services of the contractor, and was liable to pay the employees workers compensation benefits if their direct employer did not, state was a statutory employer and was entitled to immunity under the exclusive remedy rule. Fuhriman v. State, 143 Idaho 800, 153 P.3d 480 (2007).

Cited in: Blake v. Starr, 146 Idaho 847, 203 P.3d 1246 (2009); Liberty Northwest Ins. Corp. v. United States, 2011 U.S. Dist. LEXIS 138291 (D. Idaho Nov. 30, 2011).

72-301A. Alternative means of securing self-insurance. — The provisions of section 72-301, Idaho Code, with respect to security, shall be met alternatively, by the employer demonstrating to the commission that security for its self-insured worker's compensation program is covered by a cost reimbursement contract with the federal government for work performed in connection with the Idaho national laboratory including research, development, demonstration, testing, national security, defense, environmental cleanup or waste management if the cost reimbursement contract provides for the payment as otherwise required in this chapter. An employer that becomes self-insured under this section is not required to provide and maintain a security deposit, is not required to have a payroll history and is not required to have excess insurance coverage. In addition, because of the federal government reimbursement, the employer's self-insurance program includes coverage for claims for events taking place before the effective date of the self-insured program, and no separate coverage or deposit for such claims is required.

The commission shall promulgate rules governing the administration of employer self-insurance under this section.

History.
I.C., § 72-301A, as added by 2014, ch. 96, § 2, p. 262.

72-311. Notice of security — Cancellation of surety contract.

JUDICIAL DECISIONS

Reinstatement of Cancelled Policy.
Employer was not covered by its owner's workers' compensation insurance policy. Although the state insurance fund had cancelled the policy and offered to reinstate it with the employer as the insured, provided that the owner fulfilled certain conditions in a certain amount of time, the owner failed to do so. Allen v. Reynolds, 145 Idaho 807, 186 P.3d 663 (2008).

72-318. Invalid agreements — Penalty.

JUDICIAL DECISIONS

Waiver of Rights.
Until the industrial special indemnity fund's (ISIF) liability is established under § 72-332, an agreement waiving an employee's rights to claims against ISIF is violative of subsection (2) of this section. Wernecke v. St. Maries Joint Sch. Dist. # 401, 147 Idaho 277, 207 P.3d 1008 (2009).

72-323. Creation of industrial special indemnity fund.

JUDICIAL DECISIONS

Purpose of Fund.
The purpose of fund was to relieve the employer of a handicapped person of the responsibility of paying for total disability compensation to an employee rendered totally and permanently disabled because of his preexisting handicap coupled with a subsequent industrial injury. Cox v. Intermountain Lum-

ber Co., 92 Idaho 197, 439 P.2d 931 (1968); Wernecke v. St. Maries Joint School Dist. #401, 147 Idaho 277, 207 P.3d 1008 (2009).

72-327. Assessment — Method of calculation and proration — Time for payment. — (1) The state insurance fund, every authorized self-insurer and every surety authorized under the Idaho insurance code or by the director of the department of insurance to transact worker's compensation insurance in Idaho, in addition to all other payments required by statute, shall, within thirty (30) days subsequent to September 1 and April 1 of each year, pay to the industrial commission for deposit in the industrial special indemnity fund an assessment as follows:

(a) The total annual assessment payable in the manner set forth in this section shall be equal in amount to two (2) times the amount of all expenses of the industrial special indemnity fund incurred during the immediately preceding fiscal year less the existing cash balance of the industrial special indemnity fund as of the thirtieth day of June of the immediately preceding fiscal year;

(b) The total annual assessment shall be apportioned on a pro rata percentage basis among and between the state insurance fund, every authorized self-insurer and every surety authorized under the Idaho insurance code or by the director of the department of insurance to transact worker's compensation insurance in Idaho based upon the proportionate share of the total gross amount of indemnity benefits paid on Idaho worker's compensation claims during the applicable reporting period;

(c) The amount of each responsible entity's or person's assessment which is due and payable within thirty (30) days subsequent to September 1 and April 1 of any year shall be calculated by dividing one-half (1/2) of the total annual assessment amount by the responsible party's proportionate share of the total gross amount of indemnity benefits paid during the preceding period of time from January 1 through December 31. In no case shall the amount of any such assessment be less than two hundred dollars ($200).

(2) In arriving at the total gross amount of indemnity benefits paid, the amount of indemnity benefits shall include those payments provided for or made under the provisions of the worker's compensation law with respect to "income benefits" as defined in section 72-102, Idaho Code.

(3) For the purposes of this section, the responsible entities or persons shall report to the industrial commission their total gross indemnity benefits paid during the twelve (12) month period from January 1 through December 31 no later than March 3 of the next succeeding year.

(4) A penalty for the late filing of any report required by this section will be assessed in accordance with the rules of the industrial commission.

(5) The industrial special indemnity fund shall certify to the industrial commission annually the amount of the assessment payable under this section and the industrial commission shall prepare and submit to each responsible entity or person notice of its pro rata amount payable hereunder on or before April 1, 1998, and thereafter on or before September 1 and April 1 of each succeeding year.

(6) For the purposes of this section, the cash balance of the industrial special indemnity fund in any fiscal year shall mean all money deposited or invested by the state treasurer to the credit of the industrial special indemnity fund pursuant to sections 72-325 and 72-326, Idaho Code, and all interest earned thereon.

(7) For purposes of this section, the term "fiscal year" shall mean that period of time commencing upon July 1 in any year and ending upon June 30 of the next succeeding year.

History.

I.C., § 72-327, as added by 1997, ch. 206, § 3, p. 620; am. 2000, ch. 42, § 1, p. 82; am. 2006, ch. 247, § 1, p. 755; am. 2007, ch. 8, § 1, p. 7.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 8, substituted "March 3" for "March 31" in subsection (3).

72-332. Payment for second injuries from industrial special indemnity account.

JUDICIAL DECISIONS

ANALYSIS

Apportionment.
—Findings required.
Burden of proof.
Construction with other law.
"Odd-lot" doctrine.
Permanent physical impairment.
Preexisting permanent physical impairment.
Waiver of rights.

Apportionment.

—Findings Required.

Apportioning disability under both § 72-406(1) and subsection (1) of this section requires two steps. First, the industrial commission must determine the claimant's disability when considering the pre-existing physical impairment(s) and the subsequent injury, and, second, it must then apportion disability between the injury and the pre-existing impairment(s). Christensen v. S.L. Start & Assocs., 147 Idaho 289, 207 P.3d 1020 (2009).

Burden of Proof.

The four critical elements of a prima facie case against the industrial special indemnity fund include: (1) a pre-existing impairment; (2) that the impairment was "manifest"; (3) that the alleged impairment was a "subjective hindrance"; and (4) that the alleged impairment combines in causing total disability. Wernecke v. St. Maries Joint Sch. Dist. # 401, 147 Idaho 277, 207 P.3d 1008 (2009).

Construction With Other Law.

This section, when properly invoked, constitutes a narrowly-defined exception to the prohibition in § 72-318(2). Wernecke v. St. Maries Joint Sch. Dist. # 401, 147 Idaho 277, 207 P.3d 1008 (2009).

"Odd-lot" Doctrine.

Given that the employee was determined to be additionally impaired due to thigh atrophy, as well as the temporal proximity of the additional restrictions of the most recent accident, it was reasonable to find that the most recent accident was the source of the additional impairment and to conclude that the most recent accident combined with the previous conditions to place the employee within the odd lot classification. Fowble v. Snoline Express, Inc., 146 Idaho 70, 190 P.3d 889 (2008).

Where claimant had been working prior to his last accident and, but for that last accident, he would have continued to be employable, the commission was correct in finding that the claimant was totally and perma-

nently disabled solely by the final injury, pursuant to the odd-lot doctrine, and that it was the final injury which combined with his age and skills to render him unemployable. Stoddard v. Hagadone Corp., 147 Idaho 186, 207 P.3d 162 (2009).

Idaho industrial commission properly held that the Idaho industrial special indemnity account was not liable for an employee's permanent total disability benefits under subsection (1), because the employer failed to prove that the employee's last accident by itself did not render the employee totally and permanently disabled under the odd-lot doctrine. Tarbet v. J.R. Simplot Co., 151 Idaho 755, 264 P.3d 394 (2011).

Permanent Physical Impairment.

Total and permanent disability may be proven either by showing that the claimant's permanent impairment, together with nonmedical factors, totals 100% or by showing that the claimant fits within the definition of an odd-lot worker. The odd-lot category is for those workers who are so injured that they can perform no services other than those that are so limited in quality, dependability or quantity that a reasonably stable market for them does not exist. Christensen v. S.L. Start & Assocs., 147 Idaho 289, 207 P.3d 1020 (2009).

Preexisting Permanent Physical Impairment.

Where claimant was totally and permanently disabled prior to her 2002 injuries, those injuries could not increase her permanent disability, and no additional disability could be apportioned to those injuries under this section. Christensen v. S.L. Start & Assocs., 147 Idaho 289, 207 P.3d 1020 (2009).

Waiver of Rights.

Until the industrial special indemnity fund's (ISIF) liability is established under this section, an agreement waiving an employee's rights to claims against ISIF is violative of § 72-318(2). Wernecke v. St. Maries Joint Sch. Dist. # 401, 147 Idaho 277, 207 P.3d 1008 (2009).

72-334. Filing notice of claim with the industrial special indemnity fund — Time for filing — Records to be included with notice of claim — Jurisdictional effect.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1997, ch. 303, as amended by § 1 of S.L. 1999, ch. 197, effective July 1, 1999, as amended by S.L. 2004, ch. 100, § 1, and as amended by S.L. 2008, ch. 102, § 1, read: "Section 1 of this act shall be in full force and effect on and after July 1, 1997."

CHAPTER 4

BENEFITS

SECTION.

72-419. Determination of average weekly wage.
72-430. Permanent disability — Determination of — Percentages — Schedule.

72-402. Waiting period.

JUDICIAL DECISIONS

Security Bond.

Requirement to post a security bond as a condition precedent to filing a civil action against a law enforcement officer did not apply to indigent prisoner seeking writ of habeas corpus for violation of his free exercise of religion. Hyde v. Fisher, 143 Idaho 782, 152 P.3d 653 (Ct. App. 2007).

72-404. Lump sum payments.

JUDICIAL DECISIONS

Claimant's Rights.

Since the commission has the responsibility to approve lump sum settlement agreements and, in doing so, must determine that the settlement is in the best interest of the parties, it necessarily follows that the commission has jurisdiction to clarify a claimant's rights under a lump sum settlement agreement that is presented for commission. Williams v. Blue Cross, 151 Idaho 515, 260 P.3d 1186 (2011).

72-406. Deductions for preexisting injuries and infirmities.

JUDICIAL DECISIONS

ANALYSIS

Apportionment of disability.
Burden of proof.

Apportionment of Disability.

In a workers' compensation case, a remand was necessary because there was no clear indication as to a benefit claimant's permanent disability in light of the accident and her pre-existing conditions since the Idaho industrial commission failed to articulate both steps in making its apportionment after determining that there was a 5 percent permanent disability. The commission was required to evaluate the claimant's disability according to the factors in § 72-430(1), make findings as to her permanent disability in light of all of her physical impairments, including pre-existing conditions, and then apportion the amount of the permanent disability attributable to the claimant's accident. Page v. McCain Foods, Inc., 145 Idaho 302, 179 P.3d 265 (2008).

Apportioning disability under both § 72-332(1) and subsection (1) of this section requires two steps. First, the industrial commission must determine the claimant's disability when considering the pre-existing physical impairment(s) and the subsequent injury, and, second, it must then apportion disability between the injury and the pre-existing impairment(s). Christensen v. S.L. Start & Assocs., 147 Idaho 289, 207 P.3d 1020 (2009).

This section does not apply where there is no disability in excess of impairment, and, thus, the industrial commission is not required to use the two-step analysis set forth in *Page v. McCain Foods, Inc.*, 145 Idaho 302, 179 P.3d 265 (2008). Davidson v. Riverland Excavating, Inc., 147 Idaho 339, 209 P.3d 636 (2009).

Burden of proof.

A claimant bears the burden of proving disability in excess of his or her impairment rating. Davidson v. Riverland Excavating, Inc., 147 Idaho 339, 209 P.3d 636 (2009).

72-408. Income benefits for total and partial disability.

JUDICIAL DECISIONS

ANALYSIS

Manifest injustice.
Period of recovery.

Manifest Injustice.

In a workers' compensation case, the Idaho industrial commission should have corrected a manifest injustice under § 72-719(3) where a doctor subsequently stated that a benefits claimant had not achieved medical stability as of a certain date. It was later discovered that the doctor had not examined the claimant on the date in question; she failed to show up for her appointment, but later obtained more medical treatment. Page v. McCain Foods, Inc., 145 Idaho 302, 179 P.3d 265 (2008).

Period of Recovery.

Idaho industrial commission properly held that an employee, who sustained an accident on January 9, 2008, was only entitled to temporary total disability and medical care benefits for care provided up to February 19,

2008; as substantial evidence supported the conclusion that, as of that date, she had reached medical stability for the injury she suffered in the accident. Harris v. Indep. Sch. Dist. No. 1, 154 Idaho 917, 303 P.3d 604 (2013).

RESEARCH REFERENCES

A.L.R. — Workers' compensation: Value of employer-provided room, board, or clothing as factor in determining basis for or calculation of amount of compensation under state workers' compensation statute. 48 A.L.R.6th 387.

Workers' compensation: Value of expenses reimbursed by employer as factor in determining basis for or calculation of amount of compensation under state workers' compensation statute. 63 A.L.R.6th 187.

72-410. Dependents.

RESEARCH REFERENCES

A.L.R. — Legal status of posthumously conceived child of decedent. 17 A.L.R.6th 593.

72-419. Determination of average weekly wage. — Except as otherwise provided in this law, the average weekly wage of the employee at the time of the accident causing the injury or of manifestation of the occupational disease shall be taken as the basis upon which to compute compensation and shall be determined as follows:

(1) If at such time the wages are fixed by the week, the amount so fixed shall be the average weekly wage.

(2) If at such time the wages are fixed by the month, the average weekly wage shall be the monthly wage so fixed multiplied by twelve (12) and divided by fifty-two (52).

(3) If at such time the wages are fixed by the year, the average weekly wage shall be the yearly wage so fixed divided by fifty-two (52).

(4)(a) If at such time the wages are fixed by the day, hour or by the output of the employee, the average weekly wage shall be the wage most favorable to the employee computed by dividing by thirteen (13) his wages (not including overtime or premium pay) earned in the employ of the employer in the first, second, third or fourth period of thirteen (13) consecutive calendar weeks in the fifty-two (52) weeks immediately preceding the time of accident or manifestation of the disease.

(b) If the employee has been in the employ of the employer less than twelve (12) calendar weeks immediately preceding the accident or manifestation of the disease, his average weekly wage shall be computed under the foregoing paragraph, taking the wages (not including overtime or premium pay) for such purpose to be the amount he would have earned had he been so employed by the employer the full thirteen (13) calendar weeks immediately preceding such time and had worked, when work was available to other employees in a similar occupation.

(5) If at such time the hourly wage has not been fixed or cannot be ascertained, the wage for the purpose of calculating compensation shall be taken to be the usual wage for similar services where such services are rendered by paid employees.

(6) In seasonal occupations that do not customarily operate throughout the entire year, the average weekly wage shall be taken to be one-fiftieth

(1/50) of the total wages which the employee has earned from all occupations during the twelve (12) calendar months immediately preceding the time of the accident or manifestation of the disease.

(7) In the case of a volunteer emergency responder, the income benefits in the first fifty-two (52) weeks shall be based on the average weekly wage in his regular employment or sixty-seven percent (67%) of the current average weekly state wage, as determined pursuant to section 72-409(2), Idaho Code, whichever is greater.

(8) If the employee was a minor, apprentice or trainee at the time of the accident or manifestation of the disease, and it is established that under normal conditions his wages should be expected to increase during the period of disability that fact may be considered in computing his average weekly wage.

(9) When the employee is working under concurrent contracts with two (2) or more employers and the defendant employer has knowledge of such employment prior to the injury, the employee's wages from all such employers shall be considered as if earned from the employer liable for compensation.

(10) When circumstances are such that the actual rate of pay cannot be readily ascertained, the wage shall be deemed to be the contractual, customary or usual wage in the particular employment, industry or community for the same or similar service.

(11) In the case of public employees covered under section 72-205(6), Idaho Code, the income benefits shall be based on the greater of the average weekly wage of the employee's civilian employment and pay computed for one (1) weekend drill in a month, or full-time active duty pay fixed by the month as provided in section 46-605, Idaho Code.

History.

I.C., § 72-419, as added by 1971, ch. 124, § 3, p. 422; am. 1981, ch. 261, § 6, p. 552; am. 1997, ch. 274, § 7, p. 799; am. 1999, ch. 118, § 3, p. 352; am. 2008, ch. 369, § 3, p. 1014.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 369, rewrote subsection (7), which formerly read: "In the case of volunteer firemen, police and civil defense members or trainees, the income benefits shall be based on the average weekly wage in their regular employment."

RESEARCH REFERENCES

A.L.R. — Workers' compensation: Value of employer-provided room, board, or clothing as factor in determining basis for or calculation of amount of compensation under state workers' compensation statute. 48 A.L.R.6th 387.

72-422. Permanent impairment.

JUDICIAL DECISIONS

ANALYSIS

Impairment rating.
Odd-lot status.

Impairment Rating.

In a workers' compensation case, there was no error in finding a 1 percent permanent partial impairment due to a knee injury where the Idaho industrial commission was allowed to rely on a doctor's rating in a deposition, despite sustaining an objection to the impairment rating at trial; moreover, the doctor was familiar with a benefit claimant's condition, he performed surgery on the claimant's torn meniscus, and his chart notes indicate the claimant's torn meniscus had an impairment rating. The claimant did not show the doctor's actual impairment rating, which at the time of the deposition was testimony the claimant solicited, lacked reliability or probative value such that the commission properly sustained an objection to this evidence. Page v. McCain Foods, Inc., 145 Idaho 302, 179 P.3d 265 (2008).

Substantial evidence supported a permanent partial disability rating: the industrial commission properly considered the claimant's limited language skills, the labor market, and his chronic pain in determining his percentage of impairment and found that he was not an odd lot worker. Funes v. Aardema Dairy, 150 Idaho 7, 244 P.3d 151 (2010).

Odd-lot Status.

An odd lot employee is someone who is so injured that he can perform no services other than those which are so limited in quality, dependability or quantity that a reasonably stable market for them does not exist, such that he may well be classified as totally disabled. Funes v. Aardema Dairy, 150 Idaho 7, 244 P.3d 151 (2010).

Cited in: Stoddard v. Hagadone Corp., 147 Idaho 186, 207 P.3d 162 (2009).

72-423. Permanent disability.

JUDICIAL DECISIONS

ANALYSIS

Odd-lot status.
Preexisting injury.
Test for determining permanent disability.

Odd-lot Status.

An odd lot employee is someone who is so injured that he can perform no services other than those which are so limited in quality, dependability or quantity that a reasonably stable market for them does not exist, such that he may well be classified as totally disabled. Funes v. Aardema Dairy, 150 Idaho 7, 244 P.3d 151 (2010).

Preexisting Injury.

In a workers' compensation case, a remand was necessary because there was no clear indication as to a benefit claimant's permanent disability in light of the accident and her pre-existing conditions since the Idaho industrial commission failed to articulate both steps in making its apportionment after determining that there was a 5 percent permanent disability. The commission was required to evaluate the claimant's disability according to the factors in § 72-430(1), make findings as to her permanent disability in light of all of her physical impairments, including pre-existing conditions, and then apportion the amount of the permanent disability attributable to the claimant's accident. Page v. McCain Foods, Inc., 145 Idaho 302, 179 P.3d 265 (2008).

Test for Determining Permanent Disability.

Substantial evidence supported a permanent partial disability rating: the industrial commission properly considered the claimant's limited language skills, the labor market, and his chronic pain in determining his percentage of impairment and found that he was not an odd lot worker. Funes v. Aardema Dairy, 150 Idaho 7, 244 P.3d 151 (2010).

72-424. Permanent impairment evaluation.

JUDICIAL DECISIONS

Evidence.

In a workers' compensation case, there was no error in finding a 1 percent permanent partial impairment due to a knee injury where the Idaho industrial commission was allowed to rely on a doctor's rating in a deposition, despite sustaining an objection to the impairment rating at trial; moreover, the doctor was familiar with a benefit claimant's condition, he performed surgery on the claimant's torn meniscus, and his chart notes indicate the claimant's torn meniscus had an impairment rating. The claimant did not show the doctor's actual impairment rating, which at the time of the deposition was testimony the claimant solicited, lacked reliability or probative value such that the commission properly sustained an objection to this evidence. Page v. McCain Foods, Inc., 145 Idaho 302, 179 P.3d 265 (2008).

72-425. Permanent disability evaluation.

JUDICIAL DECISIONS

ANALYSIS

Evidence.
—Burden of proof.
Labor market.
Odd-lot status.
Preexisting injury.
Various factors considered.

Evidence.

—Burden of Proof.

Where an employee failed to produce any substantial evidence bearing on the employee's disability in excess of impairment, the court affirmed the commission's order finding that the employee failed to meet her burden of proof. McCabe v. Jo-Ann Stores, Inc., 145 Idaho 91, 175 P.3d 780 (2007).

Labor Market.

Employee's labor market at the time of his disability hearing was the proper labor market to be used in evaluating the non-medical factors under § 72-430 and in determining a claimant's odd-lot worker status. Brown v. Home Depot, 152 Idaho 605, 272 P.3d 577 (2012).

Odd-lot Status.

An odd lot employee is someone who is so injured that he can perform no services other than those which are so limited in quality, dependability or quantity that a reasonably stable market for them does not exist, such that he may well be classified as totally disabled. Funes v. Aardema Dairy, 150 Idaho 7, 244 P.3d 151 (2010).

Idaho industrial commission properly held that the Idaho industrial special Indemnity account was not liable for an employee's permanent total disability benefits because the employer failed to prove that the employee's last accident by itself did not render the employee totally and permanently disabled under the odd-lot doctrine. Tarbet v. J.R. Simplot Co., 151 Idaho 755, 264 P.3d 394 (2011).

Preexisting Injury.

In a workers' compensation case, a remand was necessary because there was no clear indication as to a benefit claimant's permanent disability in light of the accident and her pre-existing conditions since the Idaho industrial commission failed to articulate both steps in making its apportionment after determining that there was a 5 percent permanent disability. The commission was required to evaluate the claimant's disability according to the factors in § 72-430(1), make findings as to her permanent disability in light of all of her physical impairments, including pre-existing conditions, and then apportion the amount of the permanent disability attributable to the claimant's accident. Page v. McCain Foods, Inc., 145 Idaho 302, 179 P.3d 265 (2008).

Various Factors Considered.

Substantial evidence supported a permanent partial disability rating: the industrial commission properly considered the claimant's limited language skills, the labor market, and his chronic pain in determining his percentage of impairment and found that he was not an odd lot worker. Funes v. Aardema Dairy, 150 Idaho 7, 244 P.3d 151 (2010).

Cited in: Anderson v. Harper's, Inc., 143 Idaho 193, 141 P.3d 1062 (2006).

72-430. Permanent disability — Determination of — Percentages — Schedule. — (1) Matters to be considered. In determining percentages of permanent disabilities, account shall be taken of the nature of the physical disablement, the disfigurement if of a kind likely to limit the employee in procuring or holding employment, the cumulative effect of multiple injuries, the occupation of the employee, and his age at the time of accident causing the injury, or manifestation of the occupational disease, consideration being given to the diminished ability of the afflicted employee to compete in an open labor market within a reasonable geographical area considering all the personal and economic circumstances of the employee, and other factors as the commission may deem relevant, provided that when a scheduled or unscheduled income benefit is paid or payable for the permanent partial or total loss or loss of use of a member or organ of the body no additional benefit shall be payable for disfigurement.

(2) Preparation of schedules — Availability for inspection—Prima facie evidence. The commission may prepare, adopt and from time to time amend a schedule for the determination of the percentages of unscheduled permanent injuries less than total, including, but not limited to, a schedule for partial loss of binaural hearing and for loss of teeth, and methods for determination thereof. Such schedule shall be available for public inspection, and without formal introduction in evidence shall be prima facie evidence of the percentages of permanent disabilities to be attributed to the injuries or diseases covered by such schedule.

History.
I.C., § 72-430, as added by 1971, ch. 124, § 3, p. 422; am. 1982, ch. 231, § 5, p. 608; am. 2010, ch. 235, § 70, p. 542.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 235, substituted "likely to limit the employee" for "likely to handicap the employee" near the beginning in subsection (1).

JUDICIAL DECISIONS

Analysis

Commission's findings.
Evaluation of permanent disability.
Labor market.
Odd-lot category.
Preexisting injury or impairment.

Commission's Findings.
Where an employee failed to produce any substantial evidence bearing on the employee's disability in excess of impairment, the court affirmed the commission's order finding that the employee failed to meet her burden of proof. McCabe v. Jo-Ann Stores, Inc., 145 Idaho 91, 175 P.3d 780 (2007).

Evaluation of Permanent Disability.
Substantial evidence supported a permanent partial disability rating: the industrial commission properly considered the claimant's limited language skills, the labor market, and his chronic pain in determining his

percentage of impairment and found that he was not an odd lot worker. Funes v. Aardema Dairy, 150 Idaho 7, 244 P.3d 151 (2010).

Labor Market.

Employee's labor market at the time of his disability hearing was the proper labor market to be used in evaluating the non-medical factors under this section and in determining a claimant's odd-lot worker status. Brown v. Home Depot, 152 Idaho 605, 272 P.3d 577 (2012).

Odd-lot Category.

In a workers' compensation case, a benefits claimant failed to show that she was entitled to permanent total disability due to her odd-lot status; although the claimant had only a 10th grade education, a doctor testified that the claimant was capable of employment in sedentary positions. Furthermore, though the claimant emphasized her lack of education and office skills, the record showed that she had the skills required to input information in a computer at her last job. Page v. McCain Foods, Inc., 145 Idaho 302, 179 P.3d 265 (2008).

An odd lot employee is someone who is so injured that he can perform no services other than those which are so limited in quality, dependability or quantity that a reasonably stable market for them does not exist, such that he may well be classified as totally disabled. Funes v. Aardema Dairy, 150 Idaho 7, 244 P.3d 151 (2010).

Idaho industrial commission properly held that the Idaho industrial special indemnity account was not liable for an employee's permanent total disability benefits, because the employer failed to prove that the employee's last accident by itself did not render the employee totally and permanently disabled under the odd-lot doctrine. Tarbet v. J.R. Simplot Co., 151 Idaho 755, 264 P.3d 394 (2011).

Preexisting Injury or Impairment.

In a workers' compensation case, a remand was necessary because there was no clear indication as to a benefit claimant's permanent disability in light of the accident and her pre-existing conditions since the Idaho industrial commission failed to articulate both steps in making its apportionment after determining that there was a 5 percent permanent disability. The commission was required to evaluate the claimant's disability according to the factors in subsection (1) of this section, make findings as to her permanent disability in light of all of her physical impairments, including pre-existing conditions, and then apportion the amount of the permanent disability attributable to the claimant's accident. Page v. McCain Foods, Inc., 145 Idaho 302, 179 P.3d 265 (2008).

72-432. Medical services, appliances and supplies — Reports.

JUDICIAL DECISIONS

ANALYSIS

Causation.
Duty of employer.
Insurance.
Manifest injustice.
Medical evidence.
Medical expenses.
Payment of medical benefits.

Causation.

If an employee wishes to be compensated for his medical treatment, the employee must show that the care was reasonable and that it was related to an industrial accident or disease. Causation will not be inferred from the fact that a physician has treated the claimant. Gomez v. Dura Mark, Inc., 152 Idaho 597, 272 P.3d 569 (2012).

Duty of Employer.

Although claimant's surgeon diagnosed degenerative disc disease after claimant injured his back at work while lifting a dryer, substantial evidence supported the decision of the Idaho industrial commission finding that claimant failed to prove that his medical condition, requiring back surgery, was caused by an industrial accident for purposes of requiring the employer to pay for surgery under this section. Fife v. Home Depot, Inc., 151 Idaho 509, 260 P.3d 1180 (2011).

Insurance.

Claimant seeking reimbursement for his past insurance premiums, and for the projected costs of continuing insurance for the remainder of his life, must fail, as this section provides only for the cost of medical care, not the cost of insurance. Frank v. Bunker Hill Co., 150 Idaho 76, 244 P.3d 220 (2010).

Manifest Injustice.

In a workers' compensation case, the Idaho industrial commission should have corrected a manifest injustice where a doctor subsequently stated that a benefits claimant had not achieved medical stability as of a certain date. It was later discovered that the doctor had not examined the claimant on the date in question; she failed to show up for her appointment, but later obtained more medical treatment. Page v. McCain Foods, Inc., 145 Idaho 302, 179 P.3d 265 (2008).

Medical Evidence.

In a workers' compensation action, the employee's medical history was relevant to the proceedings. Although he objected to consideration of his prior drug use, psychiatric history and prior injuries, he was seeking disability benefits based on physical and psychological impairments; therefore, it was necessary to determine if, and to what extent, he was previously disabled. Clark v. Cry Baby Foods, LLC, — Idaho —, 307 P.3d 1208 (2013).

Medical Expenses.

Idaho industrial commission's determination that employee was not in need of further medical treatment for his back was supported by evidence provided by many physicians, and employee provided no medical evidence sufficient to controvert this finding. Dilulo v. Anderson & Wood Co., 143 Idaho 829, 153 P.3d 1175 (2007).

Payment of Medical Benefits.

Idaho industrial commission properly held that an employee, who sustained an accident on January 9, 2008, was only entitled to temporary total disability and medical care benefits for care provided up to February 19, 2008; as substantial evidence supported the conclusion that, as of that date, she had reached medical stability for the injury she suffered in the accident. Harris v. Indep. Sch. Dist. No. 1, 154 Idaho 917, 303 P.3d 604 (2013).

Cited in: Anderson v. Harper's, Inc., 143 Idaho 193, 141 P.3d 1062 (2006).

RESEARCH REFERENCES

A.L.R. — Workers' compensation: Value of expenses reimbursed by employer as factor in determining basis for or calculation of amount of compensation under state workers' compensation statute. 63 A.L.R.6th 187.

Propriety and use of balance billing in health care context. 69 A.L.R.6th 317.

72-448. Notice and limitations.

JUDICIAL DECISIONS

Time Limitations.

Dismissal of a claimant's claim for workers' compensation benefits was affirmed because the claimant did not give notice of his respiratory problems until almost two years after the initial onset of his symptoms. Jackson v. JST Mfg., 142 Idaho 836, 136 P.3d 307 (2006).

Claimant's worker's compensation claim for psychiatric disorders, dementia, and Parkinson's disease was time-barred because the claimant failed to provide written notice within sixty days. The employer's failure to inform the claimant about this notice requirement did not toll its running. Myers v. Qwest, 144 Idaho 280, 160 P.3d 437 (2007).

72-451. Psychological accidents and injuries.

JUDICIAL DECISIONS

Analysis

Prior history.
Scope of coverage.

Prior History.

Finding that the employee did not suffer a compensable psychological injury was proper where employee failed to demonstrate that the industrial accident was the predominant cause of his PTSD and symptoms, particularly in light of his prior medical history and his post-incident recovery, including a history

of psychiatric disorders. Mazzone v. Tex. Roadhouse, Inc., 154 Idaho 750, 302 P.3d 718 (2013).

Scope of Coverage.

A mental-mental claim is one in which a mental stimulus or impact results in a psychological condition. This section bars mental-mental claims. A physical-mental claim is one in which a mental stimulus or impact results in a psychological condition that is accompanied by a physical injury. A physical-mental claim may be compensable when the conditions outlined in this section are satisfied. Mazzone v. Tex. Roadhouse, Inc., 154 Idaho 750, 302 P.3d 718 (2013).

Cited in: Gibson v. Ada County Sheriff's Office, 147 Idaho 491, 211 P.3d 100 (2009).

RESEARCH REFERENCES

A.L.R. — Right to workers' compensation for physical injury or illness suffered by claimant as result of nonsudden mental stimuli — Requisites of, and factors affecting, compensability. 13 A.L.R.6th 209.

Right to workers' compensation for physical injury or illness suffered by claimant as result of sudden mental stimuli — Compensability of particular injuries and illnesses. 20 A.L.R.6th 641.

CHAPTER 5

INDUSTRIAL COMMISSION

SECTION.
72-503. Salary.
72-517. Cooperation with other agencies.
SECTION.
72-523. Source of fund — Premium tax.
72-528. Statistical information required.

72-503. Salary. — Commencing July 1, 2014, the annual salary of each member of the industrial commission shall be ninety-two thousand four hundred twenty dollars ($92,420). Industrial commissioner salaries shall be paid from sources set by the legislature. Each member of the industrial commission shall devote full time to the performance of his duties.

History.

I.C., 72-503, as added by 1986, ch. 79, § 1, p. 237; am. 1990, ch. 345, § 1, p. 930; am. 1996, ch. 257, § 3, p. 841; am. 1998, ch. 358, § 4, p. 1121; am. 2000, ch. 359, § 3, p. 1195; am. 2001, ch. 253, § 2, p. 918; am. 2004, ch. 281, § 3, p. 774; am. 2006, ch. 368, § 3, p. 1106; am. 2007, ch. 121, § 3, p. 370; am. 2008, ch. 285, § 3, p. 808; am. 2012, ch. 224, § 3, p. 610; am. 2014, ch. 316, § 3, p. 780.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 121, substituted "July 1, 2007" for "July 1, 2006" and "eighty-seven thousand ninety-nine dollars ($87,099)" for "eighty-two thousand nine hundred fifty-one dollars ($82, 951)."

The 2008 amendment, by ch. 285, in the first sentence, substituted "July 1, 2008" for "July 1, 2007" and "eighty-nine thousand seven hundred eleven dollars ($89,711)" for "eighty-seven thousand ninety-nine dollars ($87,099)."

The 2012 amendment, by ch. 224, substituted "Commencing July 1, 2012, the annual salary of each member of the industrial commission shall be ninety-one thousand five hundred five dollars ($91,505)" for "Commencing July 1, 2008, the annual salary of each member of the industrial commission shall be eighty-nine thousand seven hundred eleven dollars ($89,711)."

The 2014 amendment, by ch. 316, in the first sentence, substituted "July 1, 2014" for "July 1, 2012" and substituted "ninety-two thousand four hundred twenty dollars ($92,420)" for "ninety-one thousand five hundred five dollars ($91,505)."

Compiler's Notes.

Section 7 of S.L. 2014, ch. 316 provided: "Notwithstanding any other provision of law to the contrary, commissioner salaries referenced in Sections 1, 2 and 3 [this section] of this act shall be increased by the equivalent of 1% for the period July 1, 2014, through June 30, 2015."

72-517. Cooperation with other agencies. — The commission shall have the authority to enter into cooperative agreements with state and federal agencies to share information with those agencies and to cooperate with programs sponsored by all such agencies to facilitate the carrying out of the purposes of this law. Information provided shall be limited to the following:

(1) Individuals and entities operating the business.
(2) Business name.
(3) Mailing address.
(4) Physical location of the business.
(5) Dates of alleged violation of section 72-301, Idaho Code.
(6) Workers performing service for the business.
(7) Contact person.
(8) Telephone number of the contact person.

History.
Added 1971, ch. 124, § 3, p. 422; am. 1974, ch. 9, § 2, p. 47; am. 1996, ch. 421, § 74, p. 1445; am. 1999, ch. 329, § 28, p. 868; am. 2009, ch. 48, § 1, p. 129.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 48, rewrote the section, revising the commission's authority to enter into certain cooperative agreements with other agencies and to the limit the information provided to other agencies.

72-523. Source of fund — Premium tax. — The state insurance fund, every authorized self-insurer and every surety authorized under the Idaho insurance code or by the director of the department of insurance to transact worker's compensation insurance in Idaho, in addition to all other payments required by statute, shall semiannually, within thirty (30) days after February 1 and July 1 of each year, pay into the state treasury to be deposited in the industrial administration fund a premium tax as follows:

(1) Commencing July 1, 1993, every surety, other than self-insurers authorized to transact worker's compensation insurance, a sum equal to two and one-half percent (2.5%) of the net premiums written by each respectively on worker's compensation insurance in this state during the preceding six (6) months' period, but in no case less than seventy-five dollars ($75.00);

(2) Each self-insurer, a sum equal to two and one-half percent (2.5%) of the amount of premium such employer who is a self-insurer would be required to pay as premium to the state insurance fund, but in no case less than seventy-five dollars ($75.00);

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, for the period January 1, 2012, through December 31, 2015:

(a) Every surety, other than self-insurers authorized to transact worker's compensation insurance, a sum equal to two percent (2%) of the net premiums written by each respectively on worker's compensation insurance in this state during the preceding six (6) months' period, but in no case less than seventy-five dollars ($75.00); and

(b) Each self-insurer, a sum equal to two percent (2%) of the amount of

premium such employer who is a self-insurer would be required to pay as premium to the state insurance fund, but in no case less than seventy-five dollars ($75.00).

(4) Any insurer making any payment into the industrial administration fund under the provisions of subsection (1) of this section or, during the period January 1, 2012, through December 31, 2015, any insurer making any payment into the industrial administration fund under the provisions of subsection (3) of this section, shall be entitled to deduct fifty percent (50%) of the premium tax paid pursuant to this section from any sum that it is required to pay into the department of insurance as a tax on worker's compensation premiums.

(5) In arriving at net premiums written, dividends paid, declared or payable shall not be deducted.

(6) For the purposes of this section and section 72-524, Idaho Code, net premiums written shall mean the amount of gross direct premiums written, less returned premiums and premiums on policies not taken.

History.

I.C., § 72-523, as added by 1971, ch. 124, § 3, p. 422; am. 1974, ch. 132, § 8, p. 1329; am. 1978, ch. 264, § 16, p. 572; am. 1984, ch. 90, § 1, p. 189; am. 1990, ch. 253, § 1, p. 725; am. 1993, ch. 202, § 1, p. 556; am. 2011, ch. 267, § 1, p. 727; am. 2013, ch. 254, § 1, p. 628.

STATUTORY NOTES

Cross References.

Director of department of insurance, § 41-202.

Industrial administration fund, §§ 72-519 to 72-527.

Amendments.

The 2011 amendment, by ch. 267, added subsection (3); redesignated former subsection (3) as present subsection (4), and therein rewrote the subsection, which formerly read: "Any insurer making any payment into the industrial administration fund under the provisions of subsection (1) of this section shall be entitled to deduct one and three-tenths percent (1.3%) of the net premiums written as computed above from any sum that it is required to pay into the department of insurance as a tax on worker's compensation premiums"; and redesignated former subsections (4) and (5) as subsections (5) and (6).

The 2013 amendment, by ch. 254, substituted "December 31, 2015" for "December 31, 2013" near the beginnings of subsections (3) and (4).

72-528. Statistical information required. — (1) In addition to all information that sureties, self-insurers, the state insurance fund, the industrial special indemnity fund and noninsured employers now supply to the industrial commission, they shall, upon request of the commission, be required to report to the industrial commission all litigation expenses paid by them in any case litigated before the industrial commission, and if appealed to a higher court, all costs expended on appeal. This reporting requirement shall include all fees paid to attorneys, all expenses charged by attorneys, charges for reports or testimony of witnesses, costs of any depositions taken, any costs for investigation made before or during the hearing, costs of research or legal briefs, and all filing fees paid on account of the litigation.

(2) All attorneys engaged in representing any claimant in any litigated worker's compensation claim must, upon request of the commission, report to the industrial commission all attorney's fees and all expenses which were

incurred in the litigation and charged to the claimant. This requirement shall extend to any appeal or appeals that may be taken to a higher court by or on behalf of the claimant.

(3) The industrial commission shall supply all attorneys representing claimants with a form upon which a report in compliance with this section can be made.

(4) Reports requested hereunder must be filed with the industrial commission not later than thirty (30) days following the date of the request, which will be subsequent to the time of entry of an award by the industrial commission; or in the event of an appeal to a higher court, subsequent to a final ruling by the court.

(5) The industrial commission may make such rules as are necessary to require compliance with the provisions of this section, including refusing to allow attorneys who fail to comply with the provisions of this section the right to appear before the industrial commission.

History.
I.C., § 72-528, as added by 1988, ch. 357, § 1, p. 1059; am. 2010, ch. 139, § 1, p. 294.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 139, rewrote the section to the extent that a detailed comparison is impracticable.

CHAPTER 6

EMPLOYER'S REPORTS

72-602. Employers' notice of injury and reports.

JUDICIAL DECISIONS

Cited in: Myers v. Qwest, 144 Idaho 280, 160 P.3d 437 (2007).

72-604. Failure to report tolls employee limitations.

JUDICIAL DECISIONS

Cited in: Myers v. Qwest, 144 Idaho 280, 160 P.3d 437 (2007).

CHAPTER 7
PROCEDURES

72-701. Notice of injury and claim for compensation for injury — Limitations.

JUDICIAL DECISIONS

ANALYSIS

Constitutionality.
Notice requirement.
Untimely notice.

Constitutionality.

Requirement that an employee suffering an accident had to timely notify the employer, even if that employee was unaware of the extent of the personal injury caused by the accident, did not violate the equal protection clause of either U.S. Const. amend. XIV, § 1 or Idaho Const. Art. I, § 2 and was not a special law prohibited by Idaho Const. Art. III, § 19 because the statute applied to all persons and subject matters in a like situation. Arel v. T & L Enters., 146 Idaho 29, 189 P.3d 1149 (2008).

Notice Requirement.

Worker's compensation claimant is required to notify the employer of an accident within 60 days after the accident occurs and not within 60 days after the claimant becomes aware that the accident has caused a personal injury. Arel v. T & L Enters., 146 Idaho 29, 189 P.3d 1149 (2008).

Untimely Notice.

Employee's worker's compensation claim was properly denied because the employee failed to notify his employer of his fall at work within 60 days of the fall. Arel v. T & L Enters., 146 Idaho 29, 189 P.3d 1149 (2008).

Because the employee denied suffering any physical injury for much of the litigation, and the claim that she had suffered injuries to her brain was first raised much later, the industrial commission could reasonably conclude that the employer did not have knowledge that the employee suffered a physical injury as a result of police interviews; substantial and competent evidence supported the finding that the employer did not have the knowledge required to excuse the employee's failure to give proper notice of her claim for worker's compensation benefits. Gibson v. Ada County Sheriff's Office, 147 Idaho 491, 211 P.3d 100 (2009).

Cited in: Myers v. Qwest, 144 Idaho 280, 160 P.3d 437 (2007).

72-702. Form of notice and claim.

JUDICIAL DECISIONS

Cited in: Williams v. Blue Cross, 151 Idaho 515, 260 P.3d 1186 (2011).

72-704. Sufficiency of notice — Knowledge of employer.

JUDICIAL DECISIONS

ANALYSIS

Time limitations.
Untimely notice.

Time Limitations.

Dismissal of a claimant's claim for workers' compensation benefits was affirmed because the claimant did not give notice of his respi-

ratory problems until almost two years after the initial onset of his symptoms. Jackson v. JST Mfg., 142 Idaho 836, 136 P.3d 307 (2006).

Untimely Notice.

Because the employee denied suffering any physical injury for much of the litigation, and the claim that she had suffered injuries to her brain was first raised much later, the industrial commission could reasonably conclude that the employer did not have knowledge that the employee suffered a physical injury as a result of police interviews; substantial and competent evidence supported the finding that the employer did not have the knowledge required to excuse the employee's failure to give proper notice of her claim for worker's compensation benefits. Gibson v. Ada County Sheriff's Office, 147 Idaho 491, 211 P.3d 100 (2009).

72-705. Limitation of time — Minors and incompetents.

JUDICIAL DECISIONS

Cited in: Myers v. Qwest, 144 Idaho 280, 160 P.3d 437 (2007).

72-706. Limitation on time on application for hearing.

JUDICIAL DECISIONS

ANALYSIS

Claim not barred.
Limitation of action.

Claim Not Barred.

When claimant was injured during the course of his employment with respondent employer on October 13, 2000, claimant gave notice of the accident and received income benefits beginning on August 15, 2001. The payment ending on June 5, 2006, was marked "final." Because claimant filed his claim with the Idaho industrial commission within one year from the date of the last payment, the claim was timely filed, and the extension of the statute of limitations, provided by subsection (3) of this section, applied. Nelson v. City of Bonners Ferry, 149 Idaho 29, 232 P.3d 807 (2010).

Limitation of Action.

Employee's claim for impairment and disability benefits was time barred where an application requesting a hearing was not filed within the five year limitations period. Wichterman v. J. H. Kelly, Inc., 144 Idaho 138, 158 P.3d 301 (2007).

Because the employee did not file his claim for workers' compensation benefits within one year of the date of his injury, his claim was untimely and properly denied; neither the employer nor insurer engaged in inequitable conduct sufficient to justify the application of equitable estoppel. Bunn v. Heritage Safe Co., 148 Idaho 760, 229 P.3d 365 (2010).

Cited in: Myers v. Qwest, 144 Idaho 280, 160 P.3d 437 (2007).

72-707. Commission has jurisdiction of disputes.

JUDICIAL DECISIONS

Jurisdiction.

Idaho industrial commission lacked jurisdiction over the issue of whether an insurance policy obtained by claimant lessor for a lessee (a truck driver), which contained a forged signature, was valid because it involved a separate tort for which Idaho's workers' compensation law provided no remedy; regardless, it was not necessary to address the issue of validity because the lessee would not have been covered under the policy even it were valid because he had not elected coverage. Hernandez v. Triple Ell Transp., Inc., 145 Idaho 37, 175 P.3d 199 (2007).

72-713. Notice of hearings — Service.

JUDICIAL DECISIONS

Causation.

This section does not require specific notice for the issue of causation to be heard at an industrial commission hearing. Causation is put on issue by virtue of any claim regarding the reasonableness of medical benefits arising from an industrial accident or disease; even if reasonableness is found — without causation, there is no entitlement to benefits. Gomez v. Dura Mark, Inc., 152 Idaho 597, 272 P.3d 569 (2012).

72-715. Disobedience to commission's directive process.

JUDICIAL DECISIONS

Contempt Proceedings.

Idaho industrial commission did not err in refusing to certify a witness's refusal to the district court for contempt proceedings where the witness was not living in the state and was apparently too sick to attend the deposition, offered to supply a telephonic deposition, and the record did not indicate that the witness was ever contacted by the employee for a telephonic deposition or to reschedule. Stolle v. Bennett, 144 Idaho 44, 156 P.3d 545 (2007).

72-718. Finality of commission's decision.

JUDICIAL DECISIONS

Analysis

Construction with other law.
Lump sum agreement.
Motion for reconsideration.
Procedural defect.
Retention of jurisdiction.

Construction with Other Law.

Section 72-332, when properly invoked, constitutes a narrowly-defined exception to the prohibition in subsection (2) of this section. Wernecke v. St. Maries Joint Sch. Dist. # 401, 147 Idaho 277, 207 P.3d 1008 (2009).

Lump Sum Agreement.

Once a lump sum compensation agreement is approved by the commission, that agreement becomes an award and is final and may not be reopened or set aside absent allegations and proof of fraud. Morris v. Hap Taylor & Sons, Inc., 154 Idaho 633, 301 P.3d 639 (2013).

Motion for Reconsideration.

In a workers' compensation case, the Idaho industrial commission erred when it failed to hear a motion to reconsider due to alleged untimeliness because the motion was timely filed; the 20th day after the decision was July 4th, which was a holiday. Page v. McCain Foods, Inc., 145 Idaho 302, 179 P.3d 265 (2008).

Procedural Defect.

A lump sum settlement agreement cannot be voided for illegality where the only claimed defect is a failure by the commission to observe a single requirement of one of its rules of procedure. Morris v. Hap Taylor & Sons, Inc., 154 Idaho 633, 301 P.3d 639 (2013).

Retention of Jurisdiction.

In a situation where the claimant's impairment is progressive and, therefore, cannot adequately be determined for purposes of establishing a permanent disability rating, it is entirely appropriate for the industrial commission to retain jurisdiction until such time as the claimant's condition is nonprogressive. Or, under § 72-425, the commission may instead estimate a claimant's probable future disability and reduce it to present value for the purpose of making a final award which takes into account probable future changes in impairment. Either option is dependent upon a factual finding that the claimant's impairment is progressive. Davidson v. Riverland Excavating, Inc., 147 Idaho 339, 209 P.3d 636 (2009).

72-719. Modification of awards and agreements — Grounds — Time within which made.

JUDICIAL DECISIONS

ANALYSIS

Burden of proof.
Change in condition.
Findings of commission.
Manifest injustice.

Burden of Proof.

When a claimant applies for modification of an award due to a change in condition, the claimant bears the burden of showing a change in condition. The claimant is required to make a showing before the commission that he had an increased level of impairment, and he must establish with reasonable medical probability the existence of a causal relationship between the change in condition and the initial accident and injury. Magee v. Thompson Creek Mining Co., 152 Idaho 196, 268 P.3d 464 (2012).

Change in Condition.

Under paragraph (1)(a), the commission did not abuse its discretion in concluding that a claimant had failed to show a change in condition, as there was evidence that his depression had improved, and the evidence suggested that the implantation of a spinal stimulator had significantly reduced his daily level of pain. Magee v. Thompson Creek Mining Co., 152 Idaho 196, 268 P.3d 464 (2012).

Findings of Commission.

A claimant cannot prove permanent disability by changing his residence. Thus, the commission must consider the job market at the new residence and at the claimant's residence at the time of the injury. Magee v. Thompson Creek Mining Co., 152 Idaho 196, 268 P.3d 464 (2012).

Manifest Injustice.

In a workers' compensation case, the Idaho industrial commission should have corrected a manifest injustice where a doctor subsequently stated that a benefits claimant had not achieved medical stability as of a certain date. It was later discovered that the doctor had not examined the claimant on the date in question; she failed to show up for her appointment, but later obtained more medical treatment. Page v. McCain Foods, Inc., 145 Idaho 302, 179 P.3d 265 (2008).

Workers' compensation claimant was not entitled to reopen the hearing on the ground of manifest injustice under this section, because the Idaho industrial commission, in reaching its decision that his claim was untimely, did not rely upon any finding that related to the statements that the claimant now alleges to have been misunderstood. Cheh v. EG&G Idaho, Inc., 150 Idaho 62, 244 P.3d 206 (2010).

72-720. Powers of commission — Safety.

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of provisions of workers' compensation act for additional compensation because of failure to comply with specific requirement of statute or regulation by public for protection of workers. 31 A.L.R.6th 199.

72-721. Rules for safety — Protective appliances.

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of provisions of workers' compensation act for additional compensation because of failure to comply with specific requirement of statute or regulation by public for protection of workers. 31 A.L.R.6th 199.

72-722. Unsafe conditions — Procedure — Warning order — Safety inspection — Hearing — Decision.

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of provisions of workers' compensation act for additional compensation because of failure to comply with specific requirement of statute or regulation by public for protection of workers. 31 A.L.R.6th 199.

72-723. Violation of safety order a misdemeanor.

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of provisions of workers' compensation act for additional compensation because of failure to comply with specific requirement of statute or regulation by public for protection of workers. 31 A.L.R.6th 199.

72-732. Disposition of appeal — Jurisdiction of Supreme Court.

JUDICIAL DECISIONS

Analysis

Scope of review.
Substantial competent evidence.

Scope of Review.

When the supreme court reviews a decision of the industrial commission, it exercises free review over questions of law, but reviews questions of fact only to determine whether substantial and competent evidence supports the commission's findings. Substantial and competent evidence is relevant evidence that a reasonable mind might accept to support a conclusion. Because the commission is the fact finder, its conclusions on the credibility and weight of the evidence will not be disturbed on appeal unless they are clearly erroneous. The supreme court does not weigh the evidence or consider whether it would have reached a different conclusion from the evidence presented. Whether a claimant has an impairment and the degree of permanent disability resulting from an industrial injury are questions of fact. Funes v. Aardema Dairy, 150 Idaho 7, 244 P.3d 151 (2010).

Substantial Competent Evidence.

Idaho industrial commission's finding that the claimant failed to show that his herniated disc was caused by a compensable accident was not supported by substantial and competent evidence in the record. The court held that the claimant's testimony was credible because, although his descriptions as to the cause of his injury were more vague prior to the oral hearing, he consistently maintained that his injury arose from the jostling and vibrations of his forklift; the claimant's testimony was not the only evidence linking his herniated disc to March 9, 2004, as two physicians stated that the acute onset of pain that the claimant experienced on that date was consistent with a finding that his disc herniated at that time. Stevens-McAtee v. Potlatch Corp., 145 Idaho 325, 179 P.3d 288 (2008).

Decision by the Idaho industrial commission to deny workers' compensation benefits for an employee's claim of non-acute lumbar spine occupational disease was based on substantial competent evidence because the independent medical examine report was based on the fact that it was impossible to establish a causal connection between the employee's job and his back condition as back pain was so common and no accident had occurred. Watson v. Joslin Millwork, Inc., 149 Idaho 850, 243 P.3d 666 (2010).

Cited in: Obenchain v. McAlvain Constr., Inc., 143 Idaho 56, 137 P.3d 443 (2006); Hutton v. Manpower, Inc., 143 Idaho 573, 149 P.3d 848 (2006); Hernandez v. Triple Ell Transp., Inc., 145 Idaho 37, 175 P.3d 199 (2007); McNulty v. Sinclair Oil Corp., 152 Idaho 582, 272 P.3d 554 (2012).

CHAPTER 8

MISCELLANEOUS PROVISIONS

SECTION.

72-802. Compensation not assignable — Exempt from execution.
72-803. Claims of attorneys and physicians and for medical and related services — Approval.

72-802. Compensation not assignable — Exempt from execution. — No claims for compensation under this law, including compensation payable to a resident of this state under the worker's compensation laws of any other state, shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors, except the restrictions under this section shall not apply to enforcement of an order of any court for the support of any person by execution, garnishment or wage withholding under chapter 12, title 7, Idaho Code.

History.
I.C., § 72-802, as added by 1971, ch. 124, § 3, p. 422; am. 1985, ch. 159, § 5, p. 417; am. 2009, ch. 312, § 1, p. 912.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 312, inserted "including compensation payable to a resident of this state under the worker's compensation laws of any other state."

JUDICIAL DECISIONS

Subrogation.
An insurer possesses a contractual right of subrogation under this section, which allows the insurer to take the employee's place, on his behalf, and obtain compensation from a third party, where appropriate. Williams v. Blue Cross, 151 Idaho 515, 260 P.3d 1186 (2011).

72-803. Claims of attorneys and physicians and for medical and related services — Approval. — Claims of attorneys and claims for medical services and for medicine and related benefits shall be subject to approval by the commission; provided however, that fees for physician services shall be set using relative value units from the current year resource based relative value system (RBRVS) as it is modified from time to time, multiplied by conversion factors to be determined by the commission in rule. Factors will be set for, at least, the following CPT code areas: medicine, surgery, physical medicine, radiology, anesthesia and pathology. The commission shall adopt rules for the annual adjustment of medical reimbursements. In cases where RBRVS units are not available or have no relation to industrial claims, relative value units for fees for physician services shall be determined by the commission.

History.
I.C., § 72-803, as added by 1971, ch. 124, § 3, p. 422; am. 2005, ch. 371, § 1, p. 1186; am. 2011, ch. 313, § 1, p. 907.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 313, substituted the second sentence for the former which read: "The fees shall be adjusted each year using the same methodology as set forth in section 56-136, Idaho Code"; and deleted the former last sentence which read: "Initial conversion factors shall be determined by the commission no later than January 1, 2006, to be effective April 1, 2006."

JUDICIAL DECISIONS

ANALYSIS

Actions of commission beyond authority.
Regulation of attorney fees.

Actions of Commission Beyond Authority.

Although the Idaho industrial commission had the authority to decide issues relating to attorney's fees, it lacked jurisdiction to order an attorney to surrender fees to a former client for a matter unrelated to workers' compensation. Cheung v. Pena, 143 Idaho 30, 137 P.3d 417 (2006).

Regulation of Attorney Fees.

There is no conflict between § 3-205, which stipulates that compensation of attorneys is a matter of agreement between the involved parties, and this section, which grants the industrial commission the authority to regulate attorney fees in workers' compensation cases. Seiniger Law Offices, P.A. v. State Ex Rel. Indus. Comm'n, 154 Idaho 461, 299 P.3d 773 (2013).

Requirement under IDAPA 17.02.08.033, that an attorney show that his services operated primarily or substantially to secure the fund from which the attorney seeks a contingent fee in a worker's compensation case does not infringe upon judicial authority to regulate the practice of law. Seiniger Law Offices, P.A. v. State Ex Rel. Indus. Comm'n, 154 Idaho 461, 299 P.3d 773 (2013).

IDAPA 17.02.08.033 does not deprive a law firm of liberty without due process of law under U.S. Const. amend. XIV or Idaho Const. art. 1, § 13, since the law firm was given notice and an opportunity for a hearing before the Idaho industrial commission ruled on the reasonableness of the attorney fees claimed. Seiniger Law Offices, P.A. v. State Ex Rel. Indus. Comm'n, 154 Idaho 461, 299 P.3d 773 (2013).

72-804. Attorney's fees — Punitive costs in certain cases.

JUDICIAL DECISIONS

ANALYSIS

Attorney's fees.
Attorney's fees on appeal.
Basis of award.
Factual determination.
Reasonable grounds for non-payment.

Attorney's Fees.

Because a surety unreasonably denied medical care and temporary total disability (TTD) benefits and unreasonably delayed paying for a portion of a claimant's medical care and all of the claimant's TTD's, the industrial commission properly awarded the claimant attorney's fees pursuant to this section. However, because there was a reasonable basis for the surety to challenge the adequacy of the medical evidence supporting the finding that the claimant's tremors were caused by an industrial accident, the claimant was not entitled to attorney's fees on appeal pursuant to § 72-804. Anderson v. Harper's, Inc., 143 Idaho 193, 141 P.3d 1062 (2006).

Where an employer merely asked an appellate court to reweigh the evidence in a temporary total disability case and make a different decision, costs and attorney's fees were properly awarded to a claimant on review. Hutton v. Manpower, Inc., 143 Idaho 573, 149 P.3d 848 (2006).

Idaho industrial commission's finding that the claimant failed to show that his herniated disc was caused by a compensable accident was not supported by substantial and competent evidence in the record; the court held

that the claimant's testimony was credible because, although his descriptions as to the cause of his injury were more vague prior to the oral hearing, he consistently maintained that his injury arose from the jostling and vibrations of his forklift; the claimant's testimony was not the only evidence linking his herniated disc to March 9, 2004, as two physicians stated that the acute onset of pain that the claimant experienced on that date was consistent with a finding that his disc herniated at that time. The court awarded the claimant attorney's fees because the denial of his claim was unreasonable, as the record overwhelmingly indicated that he herniated his disc during his work shift on March 9, 2004. Stevens-McAtee v. Potlatch Corp., 145 Idaho 325, 179 P.3d 288 (2008).

Industrial Commission incorrectly awarded attorney fees to an injured worker on the basis that it was unreasonable for a surety to refuse full payment for the worker's medical bills. It was not unreasonable for the surety to take the position that it was entitled to review bills for reasonableness. Neel v. W. Constr., Inc., 147 Idaho 146, 206 P.3d 852 (2009).

Employee was not the prevailing party on appeal and therefore was not entitled to an award of attorney fees and costs. Gibson v. Ada County Sheriff's Office, 147 Idaho 491, 211 P.3d 100 (2009).

Attorney's Fees on Appeal.

In a workers' compensation case where there were two appeals, a benefits claimant was entitled to receive attorney fees for the first appeal since she prevailed on the issues of notice and whether there was an accident; however, no attorney fees were awarded as to the second appeal because the claimant did not prevail on all issues. Page v. McCain Foods, Inc., 145 Idaho 302, 179 P.3d 265 (2008).

The supreme court reversed the decision of the Idaho industrial commission which had denied an appellant/employee's claim as untimely because respondents, the employer and the Idaho state insurance fund, had reasonable grounds to contest the claim because case law on the statute of limitations for filing claims was unclear, claimant was not entitled to attorney fees. Nelson v. City of Bonners Ferry, 149 Idaho 29, 232 P.3d 807 (2010).

Basis of Award.

Workers' compensation claimant could not recover attorney's fees under this section, as he cited no legal authority for his argument that the employer engaged in a course of conduct designed to deceive him and the industrial commission. Frank v. Bunker Hill Co., 150 Idaho 76, 244 P.3d 220 (2010).

Factual Determination.

Whether or not grounds exist for awarding a claimant attorney's fees under this section is a factual determination that rests with the industrial commission, and the commission's decision will be upheld if it is based upon substantial, competent evidence. Davidson v. Riverland Excavating, Inc., 147 Idaho 339, 209 P.3d 636 (2009).

Reasonable Grounds for Non-Payment.

Idaho industrial commission did not err by failing to award attorney's fees to a former client in a legal fee dispute with an attorney because the claim was one of first impression; moreover, there was no basis for awarding attorney's fees on appeal under § 12-121. Cheung v. Pena, 143 Idaho 30, 137 P.3d 417 (2006).

Cited in: Watson v. Joslin Millwork, Inc., 149 Idaho 850, 243 P.3d 666 (2010); Moore v. Moore, 152 Idaho 245, 269 P.3d 802 (2011); Knowlton v. Wood River Med. Ctr., 151 Idaho 135, 254 P.3d 36 (2011); Morris v. Hap Taylor & Sons, Inc., 154 Idaho 633, 301 P.3d 639 (2013); Harris v. Indep. Sch. Dist. No. 1, 154 Idaho 917, 303 P.3d 604 (2013); Mazzone v. Tex. Roadhouse, Inc., 154 Idaho 750, 302 P.3d 718 (2013).

CHAPTER 9

STATE INSURANCE FUND

SECTION.

72-901. Board of directors of state insurance fund — Creation of state insurance fund.
72-903. Further statement of powers. [Repealed.]
72-904. Power to sue and be sued.
72-905. Contracts. [Repealed.]
72-909. Delegation of powers. [Repealed.]
72-913. Classification of risks and adjustment of premiums. [Repealed.]
72-914. Accounts. [Repealed.]
72-915. Dividends. [Repealed.]
72-917. Readjustment of payrolls. [Repealed.]
72-918. Policies and payment of premiums. [Repealed.]
72-919. Actions for collection in case of default — Penalty — Cancelation of policy. [Repealed.]
72-920. Withdrawal from fund. [Repealed.]
72-921. Reinsurance. [Repealed.]

SECTION.
72-922. Audit of payrolls. [Repealed.]
72-923. Falsification of payroll. [Repealed.]
72-924. Wilful misrepresentation. [Repealed.]
SECTION.
72-925. Inspections. [Repealed.]

72-901. Board of directors of state insurance fund — Creation of state insurance fund. — (1) There is hereby created as an independent body corporate politic a fund, to be known as the state insurance fund, for the purpose of insuring employers against liability for compensation under this worker's compensation law and the occupational disease compensation law and of securing to the persons entitled thereto the compensation provided by said laws. Such fund shall consist of all premiums and penalties received and paid into the fund, of property and securities acquired by and through the use of moneys belonging to the fund, and of interest earned upon moneys belonging to the fund and deposited or invested as herein provided.

Such fund shall be administered without liability on the part of the state. Such fund shall be applicable to the payment of losses sustained on account of insurance and to the payment of compensation under the worker's compensation law and the occupational disease compensation law and of expenses of administering such fund.

(2) The governor shall appoint five (5) persons to be the board of directors of the state insurance fund. One (1) member shall be a licensed insurance agent, one (1) member shall represent businesses of the state, one (1) member shall be a representative of labor, one (1) member shall be a member of the state senate and one (1) member shall be a member of the state house of representatives. The governor shall appoint a chairman from the five (5) directors. The directors shall be appointed for terms of four (4) years, except that all vacancies shall be filled for the unexpired term, provided that the first two (2) appointments the governor makes after the effective date of this act shall serve a term of two (2) years and the other three (3) members shall serve a term of four (4) years. Thereafter, a member shall serve a term of four (4) years. A certificate of appointment shall be filed in the office of the secretary of state. A majority of the members shall constitute a quorum for the transaction of business or the exercise of any power or function of the state insurance fund and a majority vote of the members shall be necessary for any action taken by the board of directors. The members of the board of directors shall appoint a manager of the state insurance fund who shall serve at their pleasure and such other officers and employees as they may require for the performance of their duties and shall prescribe the duties and compensation of each officer and employee. Members of the board of directors shall receive a compensation for service like that prescribed in section 59-509(n), Idaho Code.

(3) It shall be the duty of the board of directors to direct the policies and operation of the state insurance fund to assure that the state insurance fund is run as an efficient insurance company, remains actuarially sound and maintains the public purposes for which the state insurance fund was created.

(4) The state insurance fund is subject to and shall comply with the provisions of the Idaho insurance code, title 41, Idaho Code. For purposes of regulation, the state insurance fund shall be deemed to be a mutual insurer. The state insurance fund shall not be a member of the Idaho insurance guaranty association.

(5) Nothing in this chapter, or in title 41, Idaho Code, shall be construed to authorize the state insurance fund to operate as an insurer in other states.

History.
1917, ch. 81, § 75, p. 252; compiled and reen. C.L. 256:75; C.S., § 6288; I.C.A., § 43-1701; am. 1939, ch. 251, § 1, p. 617; am. 1941, ch. 20, § 1, p. 37; am. 1998, ch. 428, § 1, p. 1346; am. 2012, ch. 280, § 1, p. 784.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch 280, substituted "section 59-509(n)" for "section 59.509(h)" near the end of subsection (2).

72-902. State insurance manager — Powers and duties of state insurance manager.

JUDICIAL DECISIONS

Cited in: Farber v. Idaho State Ins. Fund, 147 Idaho 307, 208 P.3d 289 (2009).

72-903. Further statement of powers. [Repealed.]

Repealed by S.L. 2014, ch. 95, § 2, effective July 1, 2014.

History.
1917, ch. 81, § 78, p. 252; reen. C.L. 256:78; C.S., § 6290; I.C.A., § 43-1703; am. 1939, ch. 251, § 3, p. 617; am. 1941, ch. 20, § 3, p. 37; am. 1951, ch. 270, § 1, p. 571.

72-904. Power to sue and be sued. — The state insurance fund may, in its official name, sue and be sued in all the courts of the state, and before the industrial commission in all actions or proceedings arising out of anything done or offered in connection with the state insurance fund or business relating thereto.

History.
1917, ch. 81, § 79, p. 252; reen. C.L. 256:79; C.S., § 6291; I.C.A., § 43-1704; am. 1939, ch. 251, § 4, p. 617; am. 1941, ch. 20, § 4, p. 37; am. 2014, ch. 95, § 1, p. 262.

STATUTORY NOTES

Cross References.
State insurance fund, § 72-901.

Amendments.
The 2014 amendment, by ch. 95, substituted "state insurance fund may, in its official name" for "manager may, in his official name".

72-905. Contracts. [Repealed.]

Repealed by S.L. 2014, ch. 95, § 2, effective July 1, 2014.

History.
1917, ch. 81, § 80, p. 252; reen. C.L. 256:80; C.S., § 6292; I.C.A., § 43-1705; am. 1939, ch. 251, § 5, p. 617; am. 1941, ch. 20, § 5, p. 37.

72-909. Delegation of powers. [Repealed.]

Repealed by S.L. 2014, ch. 95, § 2, effective July 1, 2014.

History.
1917, ch. 81, § 84, p. 252; reen. C.L. 256:84; C.S., § 6296; I.C.A., § 43-1709; am. 1939, ch. 251, § 9, p. 617; am. 1941, ch. 20, § 8, p. 37.

72-913. Classification of risks and adjustment of premiums. [Repealed.]

Repealed by S.L. 2014, ch. 95, § 2, effective July 1, 2014.

History.
1917, ch. 81, § 90, p. 252; compiled and reen. C.L. 256:90; C.S., § 6301; 1927, ch. 106, § 18, p. 136; am. 1929, ch. 164, § 3, p. 295; I.C.A., § 43-1713; am. 1939, ch. 251, § 13, p. 617; am. 1941, ch. 20, § 11, p. 37; am. 1945, ch. 95, § 1, p. 145.

72-914. Accounts. [Repealed.]

Repealed by S.L. 2014, ch. 95, § 2, effective July 1, 2014.

History.
1917, ch. 81, § 91, p. 252; reen. C.L. 256:91; C.S., § 6302; I.C.A., § 43-1714; am. 1939, ch. 251, § 14, p. 617; am. 1941, ch. 20, § 12, p. 37; am. 1947, ch. 211, § 1, p. 495; am. 2001, ch. 85, § 14, p. 211; am. 2004, ch. 237, § 1, p. 700.

72-915. Dividends. [Repealed.]

STATUTORY NOTES

Legislative Intent.
Section 1 of S.L. 2009, ch. 294 provided: "Legislative Intent. (1) Historically, the State Insurance Fund has exercised its discretion, pursuant to Section 72-915, Idaho Code, to determine the annual amount of dividend, if any, a policy holder would receive.

"(2) On March 5, 2009, the Idaho Supreme Court filed its opinion in *Farber v. Idaho State Insurance Fund*, S. Ct. 35144, [withdrawn and refiled on May 5, 2009] in which it interpreted Section 72-915, Idaho Code, and ruled that the State Insurance Fund cannot exercise its discretion in determining how much of a dividend to pay to each policyholder because the statute requires a pro rata distribution of dividends to all policyholders.

"(3) In its decision, the Supreme Court stated that, if it has become prudent to alter the statutory language related to the requirements for distribution of dividends, the Legislature is the appropriate venue for such change.

"(4) It was the intent of the Legislature in passing House Bill No. 774, As Amended of the Second Regular Session of the Fifty-fourth Idaho Legislature, effective April 3, 1998, that the State Insurance Fund should operate like an efficient insurance company, subject to regulation under Title 41, Idaho Code, including the dividend provisions set forth in Chapter 28, Title 41, Idaho Code. The retroactive repeal of Section 72-915, Idaho Code, permits such retroactive repeal as long as it is 'expressly so declared' in legislation.

"(5) The retroactive repeal of Section 72-915, Idaho Code, will reconcile conflicts in the existing laws governing the State Insurance Fund and will allow the fund, like other insurance companies, to issue dividends pursuant to Chapter 28, Title 41, Idaho Code.

"(6) It is the intent of the Legislature that the provisions of this act shall not apply to any action filed in state or federal court of law in the state of Idaho on or before December 31, 2008, and the provisions of this act shall not apply to the aforementioned case of *Farber v. Idaho State Insurance Fund* as currently pending with respect to those policy holders paying annual premiums of not more than two thousand five hundred dollars ($2,500)."

Compiler's Notes.
This section, which comprised 1917, ch. 81,

§ 92, p. 252; reen. C.L. 256:92; C.S., § 6303; I.C.A., § 43-1715; am. 1939, ch. 251, § 15, p. 617; am. 1941, ch. 20, § 13, p. 37, was repealed by S.L. 2009, ch. 294, retroactively to January 1, 2003.

JUDICIAL DECISIONS

ANALYSIS

Constitutionality.
Payment of dividends.

Constitutionality.

The retroactive repeal of this section by S.L. 2009, ch. 294 was unconstitutional. CDA Dairy Queen, Inc. v. State Ins. Fund, 154 Idaho 379, 299 P.3d 186 (2013).

The retroactive repeal of this section by S.L. 2009, ch. 294 substantially impaired the policyholder's contract rights, because the dividend paid out under that section was part of the consideration of the contract. Repealing the statute that provided for the possibility of a premium refund reduced the maximum value of the contract to the policyholder. CDA Dairy Queen, Inc. v. State Ins. Fund, 154 Idaho 379, 299 P.3d 186 (2013).

Payment of Dividends.

This section is not ambiguous, and policyholders are entitled to have dividends from the fund distributed according to its plain language; the fund manager has discretion as to whether to pay a dividend, but no authority to alter the terms of the distribution. Farber v. Idaho State Ins. Fund, 147 Idaho 307, 208 P.3d 289 (2009), overruled on other grounds, Verska v. St. Alphonsus Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

Idaho State insurance fund manager did not have discretion regarding how to distribute dividends amongst policyholders under this section, but had to divide the aggregate balance proportionately according to the policyholders' prior paid premiums relative to all paid premiums; this section does not permit an imposition of an arbitrary $2,500 premium-payment threshold. Farber v. Idaho State Ins. Fund, 147 Idaho 307, 208 P.3d 289 (2009), overruled on other grounds, Verska v. St. Alphonsus Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

72-917. Readjustment of payrolls. [Repealed.]

Repealed by S.L. 2014, ch. 95, § 2, effective July 1, 2014.

History.

1917, ch. 81, § 94, p. 252; reen. C.L. 256:94; C.S., § 6305; I.C.A., § 43-1717; am. 1939, ch. 251, § 17, p. 617; am. 1941, ch. 20, § 15, p. 37.

72-918. Policies and payment of premiums. [Repealed.]

Repealed by S.L. 2014, ch. 95, § 2, effective July 1, 2014.

History.

1917, ch. 81, § 95, p. 252; reen. C.L. 256:95; C.S., § 6306; I.C.A., § 43-1718; am. 1939, ch. 251, § 18, p. 617; am. 1941, ch. 20, § 16, p. 37; am. 1977, ch. 215, § 1, p. 631.

72-919. Actions for collection in case of default — Penalty — Cancelation of policy. [Repealed.]

Repealed by S.L. 2014, ch. 95, § 2, effective July 1, 2014.

History.

1917, ch. 81, § 96, p. 252; reen. C.L. 256:96; C.S., § 6307; I.C.A., § 43-1719; am. 1939, ch. 251, § 19, p. 617; am. 1941, ch. 20, § 17, p. 37; am. 1941, ch. 112, § 1, p. 199.

72-920. Withdrawal from fund. [Repealed.]

Repealed by S.L. 2014, ch. 95, § 2, effective July 1, 2014.

History.
1917, ch. 81, § 97, p. 252; reen. C.L. 256:97; C.S., § 6308; am. 1921, ch. 217, § 23, p. 474; I.C.A., § 43-1720; am. 1939, ch. 251, § 20, p. 617; am. 1941, ch. 20, § 18, p. 37.

72-921. Reinsurance. [Repealed.]

Repealed by S.L. 2014, ch. 95, § 2, effective July 1, 2014.

History.
1917, ch. 81, § 98, p. 252; reen. C.L. 256:98; C.S., § 6309; I.C.A., § 43-1721; am. 1939, ch. 251, § 21, p. 617; am. 1941, ch. 20, § 19, p. 37; am. 1945, ch. 147, § 1, p. 225; am. 1986, ch. 112, § 1, p. 305.

72-922. Audit of payrolls. [Repealed.]

Repealed by S.L. 2014, ch. 95, § 2, effective July 1, 2014.

History.
1917, ch. 81, § 99, p. 252; reen. C.L. 256:99; C.S., § 6310; I.C.A., § 43-1722; am. 1939, ch. 251, § 22, p. 617; am. 1941, ch. 20, § 20, p. 37.

72-923. Falsification of payroll. [Repealed.]

Repealed by S.L. 2014, ch. 95, § 2, effective July 1, 2014.

History.
1917, ch. 81, § 100, p. 252; reen. C.L. 256:100; C.S., § 6311; I.C.A., § 43-1723; am. 1939, ch. 251, § 23, p. 617; am. 1941, ch. 20, § 21, p. 37.

72-924. Wilful misrepresentation. [Repealed.]

Repealed by S.L. 2014, ch. 95, § 2, effective July 1, 2014.

History.
1917, ch. 81, § 101, p. 252; reen. C.L. 256:101; C.S., § 6312; I.C.A., § 43-1724.

72-925. Inspections. [Repealed.]

Repealed by S.L. 2014, ch. 95, § 2, effective July 1, 2014.

History.
1917, ch. 81, § 102, p. 252; reen. C.L. 256:102; C.S., § 6313; I.C.A., § 43-1725; am. 1939, ch. 251, § 24, p. 617; am. 1941, ch. 20, § 22, p. 37.

CHAPTER 10

CRIME VICTIMS COMPENSATION

SECTION.
72-1025. Fines — Reimbursements — Priority — Disposition.
SECTION.
72-1026. Payments to medical providers.

72-1003. Definitions.

RESEARCH REFERENCES

A.L.R. — Recovery of workers' compensation for acts of terrorism. 20 A.L.R.6th 729.

72-1004. Powers and duties of commission.

JUDICIAL DECISIONS

Jurisdiction.

When the court reversed defendant's conviction for lewd and lascivious conduct with a minor under sixteen and vacated the restitution order, it lacked personal jurisdiction under § 18-202 to order the Idaho industrial commission to refund restitution payments defendant had already made to the commission. The commission was not a party to the action, and its attorneys never received notice of defendant's motion for a restitution refund. Hooper v. State, 150 Idaho 497, 248 P.3d 748 (2011).

72-1009. Crime victims compensation account.

JUDICIAL DECISIONS

Restitution Order Vacated.

When the court reversed defendant's conviction for lewd and lascivious conduct with a minor under sixteen and vacated the restitution order, it lacked personal jurisdiction under § 18-202 to order the Idaho industrial commission to refund restitution payments defendant had already made to the commission. The commission was not a party to the action, and its attorneys never received notice of defendant's motion for a restitution refund. Hooper v. State, 150 Idaho 497, 248 P.3d 748 (2011).

72-1018. Award of compensation.

JUDICIAL DECISIONS

Restitution Order Vacated.

When the court reversed defendant's conviction for lewd and lascivious conduct with a minor under sixteen and vacated the restitution order, it lacked personal jurisdiction under § 18-202 to order the Idaho industrial commission to refund restitution payments defendant had already made to the commission. The commission was not a party to the action, and its attorneys never received notice of defendant's motion for a restitution refund. Hooper v. State, 150 Idaho 497, 248 P.3d 748 (2011).

72-1025. Fines — Reimbursements — Priority — Disposition. — (1) In addition to any other fine which may be imposed upon each person found guilty of criminal activity, the court shall impose a fine or reimbursement according to the following schedule, unless the court orders that such fine or reimbursement be waived only when the defendant is indigent and at the time of sentencing shows good cause for inability to pay and written findings to that effect are entered by the court:

(a) For each conviction or finding of guilt of each felony count, a fine or reimbursement of not less than seventy-five dollars ($75.00) per felony count;

(b) For each conviction or finding of guilt of each misdemeanor count, a

fine or reimbursement of thirty-seven dollars ($37.00) per misdemeanor count;

(c) In addition to any fine or reimbursement ordered under subsection (a) or (b) above, the court shall impose a fine or reimbursement of not less than three hundred dollars ($300) per count for any conviction or finding of guilt for any sex offense, including, but not limited to, offenses pursuant to sections 18-1506, 18-1507, 18-1508, 18-1508A, 18-6101, 18-6108, 18-6605 and 18-6608, Idaho Code.

(2) The fine or reimbursement imposed under the provisions of this section shall have priority over all other judgments of the court, except an order to pay court costs.

(3) Notwithstanding the provisions of section 19-4705, Idaho Code, the fines or reimbursements imposed under the provisions of this section shall be paid into the crime victims compensation account.

History.

I.C., § 72-1025, as added by 1986, ch. 337, § 1, p. 824; am. 1987, ch. 137, § 1, p. 270; am. 1989, ch. 50, § 1, p. 63; am. 1993, ch. 278, § 1, p. 940; am. 2009, ch. 139, § 1, p. 421.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 139, increased the fine or reimbursement amounts in subsections (1)(a) through (1)(c).

JUDICIAL DECISIONS

Cited in: State v. Steelsmith, 153 Idaho 577, 288 P.3d 132 (Ct. App. 2012).

72-1026. Payments to medical providers. — (1) The commission may adopt a fee schedule to determine the allowable payments to be made to medical providers under this chapter, including but not limited to, the fee schedule the commission has adopted to determine the allowable payments to be made to medical providers under the Idaho worker's compensation law.

(2) A medical provider who accepts the full allowable payment from the commission under this chapter for medical services provided to a victim or claimant shall be deemed to have agreed to accept those payments as payment in full for those medical services. Except as provided in subsection (3) herein, a medical provider who has received payment from the commission for medical services provided to a victim or claimant under this chapter may not attempt to collect any further payment from the victim or the claimant for those same services.

(3) In the event the commission, due to a lack of available funds or some other cause, is unable to pay the full allowable payment to a medical provider for medical services provided to a victim or claimant under the provisions of this chapter, the medical provider may collect the unpaid balance for those services from the victim or claimant, but in no event shall the total amount collected by the provider from the commission and the victim or claimant exceed the full allowable payment the provider would have received from the commission under the provisions of this chapter.

History.
I.C., § 72-1026, as added by 2010, ch. 136, § 1, p. 290.

CHAPTER 11

PEACE OFFICER AND DETENTION OFFICER TEMPORARY DISABILITY ACT

SECTION.
72-1101. Legislative intent.
72-1102. Short title.
72-1103. Definitions.
72-1104. Compensation and costs.
72-1105. Fund established — Fines — Priority — Disposition.

72-1101. Legislative intent. — The purpose of this chapter is to provide a full salary to employees in certain dangerous occupations who have been injured on the job. The legislature finds that the rights and protections provided to peace officers and detention officers under this chapter constitute matters of statewide concern. Since these officers are employed in dangerous conditions, it is necessary that this chapter be applicable to all such officers wherever situated within the state of Idaho. In addition to the provisions of this chapter, state and local law enforcement agencies may provide additional monetary protections for their employees.

History.
I.C., § 72-1101, as added by 2007, ch. 365, § 1, p. 1098.

STATUTORY NOTES

Effective Dates.
Section 2 of S.L. 2007, ch. 365 provided that the act should take effect on and after July 1, 2007.

72-1102. Short title. — This chapter shall be known and may be cited as the "Peace Officer and Detention Officer Temporary Disability Act."

History.
I.C., § 72-1102, as added by 2007, ch. 365, § 1, p. 1098.

STATUTORY NOTES

Effective Dates.
Section 2 of S.L. 2007, ch. 365 provided that the act should take effect on and after July 1, 2007.

72-1103. Definitions. — As used in this chapter, unless the context requires otherwise:

(1) "Detention officer" means an employee in a county jail who is responsible for the safety, care, protection and monitoring of county jail inmates; and

(2) "Peace officer" means any employee of a police or other law enforcement agency that is a part of or administered by the state or any political subdivision thereof who has the duty to arrest and whose duties include the

prevention and detection of crime and the enforcement of the penal, traffic or highway laws of this state or any political subdivision of this state and shall include, but not be limited to, appointed chiefs, elected sheriffs, and fish and game officers.

History.
I.C., § 72-1103, as added by 2007, ch. 365, § 1, p. 1098.

STATUTORY NOTES

Effective Dates.
Section 2 of S.L. 2007, ch. 365 provided that the act should take effect on and after July 1, 2007.

72-1104. Compensation and costs. — On and after July 1, 2008, and subject to available funds in the peace officer and detention officer temporary disability fund established in section 72-1105, Idaho Code:

(1) Any peace officer or detention officer employed by the state of Idaho or any city or county thereof who is injured in the performance of his or her duties:

(a) When responding to an emergency; or

(b) When in the pursuit of an actual or suspected violator of the law; or

(c) **[Null and void, effective July 1, 2015]** When the injury is caused by the actions of another person,

and by reason thereof is temporarily incapacitated from performing his or her duties and qualifies for worker's compensation wage loss benefits under title 72, Idaho Code, shall be paid his or her full rate of base salary, as fixed by the state or by applicable ordinance or resolution, until the temporary disability arising from such injury has ceased. The employer shall withhold, collect and pay income tax on the salary paid to the employee as required by chapter 30, title 63, Idaho Code. Determinations and any disputes regarding entitlement to benefits under this chapter shall be decided by the industrial commission in accordance with the provisions of title 72, Idaho Code, and commission rules.

(2) During the period for which the salary for temporary incapacity shall be paid by the employer, any worker's compensation received or collected by the employee shall be remitted to the state or to the respective city or county, as applicable, and paid into the treasury thereof. In addition, the employer shall be reimbursed for any remaining amount of salary not covered by such worker's compensation by application to the peace officer and detention officer temporary disability fund, as established in section 72-1105, Idaho Code, pursuant to rules adopted by the industrial commission; provided however, that any such reimbursement from the fund shall continue only during such period as the employee qualifies for worker's compensation wage loss benefits under title 72, Idaho Code.

History.
I.C., § 72-1104, as added by 2007, ch. 365, § 1, p. 1098; am. 2012, ch. 186, § 1, p. 490.

STATUTORY NOTES

Subsection (1)(c) repealed effective July 1, 2015. Section 2 of S.L. 2012, ch. 186 provided "The provisions of Section 72-1104(1)(c) of this act shall be null, void and of no force and effect on and after July 1, 2015."

Amendments.

The 2012 amendment, by ch. 186, divided and designated a portion of the existing provisions in subsection (1) as the introductory paragraph and paragraphs (1)(a) and (1)(b) and added paragraph (1)(c).

Effective Dates.

Section 2 of S.L. 2007, ch. 365 provided that the act should take effect on and after July 1, 2007.

72-1105. Fund established — Fines — Priority — Disposition. — (1) The peace officer and detention officer temporary disability fund is hereby created in the state treasury and shall be administered by the industrial commission for the purpose of providing a full rate of salary for any peace officer or detention officer who is injured while engaged in those activities as provided in section 72-1104, Idaho Code, and is thereby temporarily incapacitated from performing his or her duties. Moneys shall be paid into the fund as provided by law and shall consist of fines collected pursuant to subsection (2) of this section, appropriations, gifts, grants, donations and income from any other source. Moneys in the fund may be appropriated only for the purposes of this chapter, which shall include administrative expenses. The treasurer shall invest all idle moneys in the fund. Any interest earned on the investment of idle moneys shall be returned to the fund.

(2) In addition to any other fine that may be imposed upon each person found guilty of criminal activity, the court shall impose a fine in the amount of three dollars ($3.00) for each conviction or finding of guilt of each felony or misdemeanor count, unless the court orders that such fine be waived only when the defendant is indigent and at the time of sentencing shows good cause for inability to pay and written findings to that effect are entered by the court.

(3) Except as otherwise provided in section 72-1025, Idaho Code, the fine imposed under this section shall have priority over all other judgments of the court, except an order to pay court costs.

(4) Notwithstanding the provisions of section 19-4705, Idaho Code, the fines imposed under this section shall be paid into the peace officer and detention officer temporary disability fund.

History.

I.C., § 72-1105, as added by 2007, ch. 365, § 1, p. 1098.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2007, ch. 365 provided that the act should take effect on and after July 1, 2007.

JUDICIAL DECISIONS

Cited in: State v. Steelsmith, 153 Idaho 577, 288 P.3d 132 (Ct. App. 2012).

PART II

CHAPTER 13

EMPLOYMENT SECURITY LAW

SECTION.
72-1306. Base period.
72-1312. Compensable week.
72-1312A. Corporate officer — Employment.
72-1315. Covered employer.
72-1316. Covered employment.
72-1316A. Exempt employment.
72-1318. Director — Department.
72-1318A. Decision.
72-1318B. Determination, revised determination, redetermination or special redetermination.
72-1333. Department of labor — Authority and duties of the director.
72-1336A. Youth employment and job training programs.
72-1342. Disclosure of information.
72-1345A. Idaho career information system.
72-1346. Employment security fund.
72-1346B. Unemployment benefit bonds.
72-1347A. Employment security reserve fund — Special administration fund.
72-1347B. Workforce development training fund.
72-1349. Payment of contributions — Limitation of actions.
72-1350. Taxable wage base and taxable wage rates.
SECTION.
72-1351. Experience rating and voluntary transfers of experience rating accounts.
72-1351A. Mandatory transfers of experience rating accounts and federal conformity provisions regarding transfers of experience and assignment of rates.
72-1351B. Federal conformity provision prohibiting relief from liability.
72-1352A. Corporate officers — Exemption from coverage — Notification — Reinstatement.
72-1361. Appeals to the department and to the commission.
72-1366. Personal eligibility conditions.
72-1367. Benefit formula.
72-1367A. Extended benefits.
72-1368. Claims for benefits — Appellate procedure — Limitation of actions.
72-1369. Overpayments, civil penalties and interest — Collection and waiver.
72-1372. Civil penalties.
72-1374. Unauthorized disclosure of information.

72-1302. Declaration of state public policy.

JUDICIAL DECISIONS

Cited in: Giltner, Inc. v. Idaho Dep't of Commerce & Labor, 145 Idaho 415, 179 P.3d 1071 (2008).

72-1306. Base period. — (1) "Base period" means the first four (4) of the last five (5) completed calendar quarters immediately preceding the beginning of a benefit year. If a claimant has insufficient wages in the base period to establish eligibility for unemployment benefits, the "base period" shall be the last four (4) completed calendar quarters immediately preceding the beginning of a benefit year.

(2) "Alternate base period" means the first four (4) of the last five (5) completed calendar quarters immediately prior to the Sunday of the week in which a medically verifiable temporary total disability occurred. If a claimant has insufficient wages in the base period to establish eligibility for unemployment benefits, the "alternate base period" shall be the last four (4) completed calendar quarters immediately prior to the Sunday of the week in which a medically verifiable temporary total disability occurred. To use the

alternate base period, a claimant must file within three (3) years of the beginning of the temporary total disability, and no longer than six (6) months after the end of the temporary total disability.

History.
1947, ch. 269, § 6, p. 793; am. 1949, ch. 144, § 6, p. 252; am. 1967, ch. 117, § 1, p. 233; am. 1993, ch. 181, § 1, p. 461; am. 1998, ch. 1, § 6, p. 3; am. 2009, ch. 238, § 1, p. 733.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 238, added the second sentences in subsections (1) and (2).

Effective Dates.
Section 3 of S.L. 2009, ch. 238 provided that the act should take effect on and after October 1, 2009.

72-1312. Compensable week. — "Compensable week" means a week of unemployment, all of which occurred within the benefit year, for which an eligible claimant is entitled to benefits and during which:

(1) The claimant had either no work or less than full-time work; and

(2) No benefits have been paid to the claimant; and

(3) The claimant complied with all of the personal eligibility conditions of section 72-1366, Idaho Code; and

(4) The total wages payable to the claimant for less than full-time work performed in such week amounted to less than one and one-half (1 1/2) times his weekly benefit amount; provided however, that any benefits which a claimant receives for any week shall be reduced by:

(a) An amount equal to the amount received as pension, retirement pay, annuity, or any other similar payment which is based on the previous work of such individual which is reasonably attributable to such week, if the payment is made under a plan maintained or contributed to by the base period employer and the claimant has made no contributions to the plan;

(b) An amount equal to temporary disability benefits received under a worker's compensation law of any state or under a similar law of the United States; and

(5) All of which occurred after a waiting week as defined in section 72-1329, Idaho Code.

History.
1947, ch. 269, § 12, p. 793; am. 1949, ch. 144, § 12, p. 252; am. 1961, ch. 298, § 1, p. 539; am. 1967, ch. 117, § 3, p. 233; am. 1980, ch. 256, § 1, p. 667; am. 1990, ch. 353, § 1, p. 946; am. 1998, ch. 1, § 12, p. 3; am. 2010, ch. 183, § 1, p. 377.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 183, added the paragraph (4)(a) designation and paragraph (4)(b).

72-1312A. Corporate officer — Employment. — (1) A corporate officer meeting the requirements of section 72-1312, Idaho Code, whose claim for benefits is based on any wages with a corporation in which the

corporate officer or a family member of the corporate officer has an ownership interest shall be:

(a) Not "unemployed" and ineligible for benefits in any week during the corporate officer's term of office with the corporation, even if wages are not being paid.

(b) "Unemployed" in any week the corporate officer is not employed by the corporation for a period of indefinite duration because of circumstances beyond the control of the corporate officer or a family member of the corporate officer with an ownership interest in the corporation, and the period of "unemployment" extends at least through the corporate officer's benefit year end date. If at any time during the benefit year the corporate officer resumes or returns to work for the corporation, it shall be a rebuttable presumption that the corporate officer's unemployment was due to circumstances within the corporate officer's control or the control of a family member with an ownership interest in the corporation, and all benefits paid to the corporate officer during the benefit year shall be considered an overpayment for which the corporate officer shall be liable for repayment.

(2) For purposes of this section, "family member" is a person related by blood or marriage as parent, stepparent, grandparent, spouse, brother, sister, child, stepchild, adopted child or grandchild.

History.
I.C., § 72-1312A, as added by 2011, ch. 82, § 1, p. 173.

72-1315. Covered employer. — "Covered employer" means:

(1) Any person who, in any calendar quarter in either the current or preceding calendar year paid for services in covered employment wages of one thousand five hundred dollars ($1,500) or more, or for some portion of a day in each of twenty (20) different calendar weeks, whether or not consecutive, in either the current or preceding calendar year employed at least one (1) individual, irrespective of whether the same individual was in employment in each such day. For purposes of this subsection there shall not be taken into account any wages paid to, or in employment of, an employee performing domestic services referred to in subsection (8) of this section.

(2) All individuals performing services within this state for an employer who maintains two (2) or more separate establishments within this state shall be deemed to be performing services for a single employer.

(3) Each individual engaged to perform or assist in performing the work of any person in the service of an employer shall be deemed to be employed by such employer for all the purposes of this chapter, whether such individual was engaged or paid directly by such employer or by such person, provided the employer had actual or constructive knowledge of the work.

(4) Any employer, whether or not an employer at the time of acquisition, who acquires the organization, trade, or business or substantially all the assets thereof, of another who at the time of such acquisition was a covered employer.

(5) In the case of agricultural labor, any person who:

(a) During any calendar quarter in the calendar year or the preceding calendar year paid wages in cash of twenty thousand dollars ($20,000) or more for agricultural labor; or

(b) On each of some twenty (20) days during the calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least ten (10) individuals in employment in agricultural labor for some portion of the day.

(c) Such labor is not agricultural labor when it is performed by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the immigration and nationality act, unless the individual is required to be covered by the federal unemployment tax act.

(6) A licensed farm labor contractor, as provided in chapter 16, title 44, Idaho Code, who furnishes any individual to perform agricultural labor for another person.

(7) An unlicensed, nonexempt farm labor contractor, as provided in chapter 16, title 44, Idaho Code, who furnishes any individual to perform agricultural labor for another person not treated as a covered employer under subsection (5) of this section. If an unlicensed, nonexempt farm labor contractor furnishes any individual to perform agricultural labor for another person who is treated as a covered employer under subsection (5) of this section, both such other person and the unlicensed, nonexempt farm labor contractor shall be jointly and severally liable for any moneys due under the provisions of this chapter.

(8) In the case of domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, any person who during any calendar quarter in the calendar year or the preceding calendar year paid wages in cash of one thousand dollars ($1,000) or more for such service.

A person treated as a covered employer under this subsection (8) shall not be treated as a covered employer with respect to wages paid for any service other than domestic service referred to in this subsection (8) unless such person is treated as a covered employer under subsection (1) or (5) of this section, with respect to such other service.

(9) Any governmental entity as defined in section 72-1322C, Idaho Code.

(10) A nonprofit organization as defined in section 72-1322D, Idaho Code.

(11) An employer who has elected coverage pursuant to the provisions of subsection (3) of section 72-1352, Idaho Code.

History.

1947, ch. 269, § 15, p. 793; am. 1949, ch. 144, § 15, p. 252; am. 1955, ch. 18, § 1, p. 20; am. 1967, ch. 117, § 5, p. 233; am. 1971, ch. 142, § 2, p. 595; am. 1977, ch. 179, § 1, p. 464; am. 1980, ch. 52, § 1, p. 107; am. 1983, ch. 146, § 1, p. 382; am. 1989, ch. 57, § 1, p. 78; am. 1996, ch. 62, § 1, p. 180; am. 1998, ch. 1, § 15, p. 3; am. 2008, ch. 44, § 1, p. 106.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 44, in subsection (6), substituted "licensed farm labor contractor, as provided in chapter 16, title 44, Idaho Code" for "crew leader" and "any individual" for "members of a crew," and deleted paragraphs (6)(a) through (6)(c), which pertained to requirements of a crew leader; and rewrote subsection (7), which formerly read: "In the case of any individual who is fur-

nished by a crew leader to perform agricultural labor for another person, such other person and not the crew leader shall be treated as the employer of the individual if the crew leader is not, under the provisions of subsection (6) of this section, considered to be the employer and such other person shall be treated as having paid cash remuneration to the individual in an amount equal to the amount of cash remuneration paid to the individual by the crew leader (either on his behalf or on behalf of such other person) for the agricultural labor performed for such other person."

72-1316. Covered employment. — (1) "Covered employment" means an individual's entire service performed by him for wages or under any contract of hire, written or oral, express or implied, for a covered employer or covered employers.

(2) Notwithstanding any other provision of state law, services shall be deemed to be in covered employment if a tax is required to be paid or was required to be paid the previous year on such services under the federal unemployment tax act or if the director determines that as a condition for full tax credit against the tax imposed by the federal unemployment tax act such services are required to be covered under this chapter.

(3) Services covered by an election pursuant to section 72-1352, Idaho Code, and services covered by an election approved by the director pursuant to section 72-1344, Idaho Code, shall be deemed to be covered employment during the effective period of such election.

(4) Services performed by an individual for remuneration shall, for the purposes of the employment security law, be covered employment unless it is shown:

(a) That the worker has been and will continue to be free from control or direction in the performance of his work, both under his contract of service and in fact; and

(b) That the worker is engaged in an independently established trade, occupation, profession, or business.

(5) "Covered employment" shall include an individual's entire service, performed within or both within and without this state:

(a) If the service is localized in this state; or

(b) If the service is not localized in any state but some of the service is performed in this state, and:

(i) The individual's base of operations or the place from which such service is directed or controlled is in this state; or

(ii) The individual's base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(c) Service shall be deemed to be localized within a state if:

(i) The service is performed entirely within such state; or

(ii) The service is performed both within and without such state, but the service performed without such state is incidental, temporary or transitory in nature or consists of isolated transactions, as compared to the individual's service within the state.

(d) "Covered employment" shall include an individual's service, wherever performed within the United States, or Canada, if:

(i) Such service is not covered under the unemployment compensation law of any other state, the Virgin Islands, or Canada; and

(ii) The place from which the service is directed or controlled is in this state.

(6) "Covered employment" shall include the services of an individual who is a citizen of the United States, performed outside the United States, except in Canada, in the employ of an American employer, other than service which is deemed "covered employment" under the provisions of subsection (5) of this section or the parallel provisions of another state's law, if:

(a) The employer's principal place of business in the United States is located in this state; or

(b) The employer has no place of business in the United States; but

(i) Is an individual who is a resident of this state; or

(ii) Is a corporation which is organized under the laws of this state; or

(iii) Is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(c) None of the criteria of provision (a) or (b) of this subsection is met but the employer has elected coverage in this state, or the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service, under the law of this state;

(d) An "American employer" for purposes of this subparagraph means a person who is:

(i) An individual who is a resident of the United States; or

(ii) A partnership if two-thirds (2/3) or more of the partners are residents of the United States; or

(iii) A trust if all of the trustees are residents of the United States; or

(iv) A corporation organized under the laws of the United States or of any state.

(e) For purposes of this subsection, "United States" means the states, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

History.

1947, ch. 269, § 16, p. 793; am. 1949, ch. 144, § 16, p. 252; am. 1949, ch. 204, § 1, p. 425; am. 1951, ch. 235, § 2, p. 472; am. 1957, ch. 193, § 1, p. 382; am. 1959, ch. 252, § 1, p. 537; am. 1963, ch. 316, § 2, p. 864; am. 1963, ch. 318, § 1, p. 872; am. 1965, ch. 214, § 1, p. 490; am. 1970, ch. 13, § 1, p. 23; am. 1971, ch. 142, § 4, p. 595; am. 1974, ch. 51, § 1, p. 1106; am. 1976, ch. 224, § 1, p. 797; am. 1977, ch. 179, § 2, p. 464; am. 1978, ch. 112, § 2, p. 232; am. 1991, ch. 67, § 1, p. 162; am. 1993, ch. 119, § 1, p. 297; am. 1998, ch. 1, § 17, p. 3; am. 2004, ch. 24, § 1, p. 32; am. 2008, ch. 44, § 2, p. 108.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 44, added "for a covered employer or covered employers" at the end of subsection (1).

JUDICIAL DECISIONS

ANALYSIS

Covered employees.
Independent contractor.
Individualized findings.

Covered Employees.

Transportation company's reclassified drivers were not engaged in an independently established trade, occupation, profession, or business and were necessarily the company's employees for purposes of the Employment Security Law, where all of the reclassified drivers operated under the company's department of transportation authority (DOT); the reclassified drivers were solely dependent on the company's DOT authority to haul goods in interstate commerce and could not operate without it. Giltner, Inc. v. Idaho Dep't of Commerce & Labor, 145 Idaho 415, 179 P.3d 1071 (2008).

Independent Contractor.

Industrial commission's finding that sheetrock tapers and hangers were engaged in covered employment, and not engaged in an independent trade or business, ignored applicable factors, including that the tapers and hangers were paid by the square foot and not by the hour, did not receive benefits or have taxes withheld, were free to set their own hours of work, and owned their own tools and vehicles. Excell Constr., Inc. v. Idaho Dep't of Commerce & Labor, 145 Idaho 783, 186 P.3d 639 (2008).

Individualized Findings.

Employer liability for unpaid unemployment insurance taxes had to be assessed with reference to each individual worker or to each similarly situated group of workers. Industrial commission erred in not reaching individualized findings where one worker received 89 percent of his income from the employer and another worker received 1 percent of his income from the employer. Excell Constr., Inc. v. Idaho Dep't of Commerce & Labor, 145 Idaho 783, 186 P.3d 639 (2008).

72-1316A. Exempt employment. — "Exempt employment" means service performed:

(1) By an individual in the employ of his spouse or child.

(2) By a person under the age of twenty-one (21) years in the employ of his father or mother.

(3) By an individual under the age of twenty-two (22) years who is enrolled as a student in a full-time program at an accredited nonprofit or public education institution for which credit at such institution is earned in a program which combines academic instruction with work experience. This subsection shall not apply to service performed in a program established at the request of an employer or group of employers.

(4) In the employ of the United States government or an instrumentality of the United States exempt under the constitution of the United States from the contributions imposed by this chapter.

(5) In the employ of a governmental entity in the exercise of duties:

(a) As an elected official;

(b) As a member of a legislative body, or a member of the judiciary, of a state or political subdivision thereof;

(c) As a member of the state national guard or air national guard;

(d) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency;

(e) In a position which, pursuant to the laws of this state, is designated as (i) a major nontenured policymaking or advisory position, or (ii) a policymaking or advisory position which ordinarily does not require more than eight (8) hours per week; or

(f) As an election official or election worker including, but not limited to, a poll worker, an election judge, an election clerk or any other member of an election board, if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than one thousand dollars ($1,000).

(6) By an inmate of a correctional, custodial or penal institution, if such services are performed for or within such institution.

(7) In the employ of:

(a) A church or convention or association of churches; or

(b) An organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church, or convention or association of churches; or

(c) In the employ of an institution of higher education, if it is devoted primarily to preparation of a student for the ministry or training candidates to become members of a religious order; or

(d) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order.

(8) By a program participant in a facility that provides rehabilitation for individuals whose earning capacity is impaired by age, physical or mental limitation, or injury or provides remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed into the labor market.

(9) As part of an unemployment work relief program or as part of an unemployment work training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training.

(10) Service with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of congress other than the social security act.

(11) As a student nurse in the employ of a hospital or nurses' training school by an individual who is enrolled and is regularly attending courses in a nurses' training school approved pursuant to state law, and service performed as an intern in the employ of a hospital by an individual who has completed a course in a medical school approved pursuant to state law.

(12) By an individual under the age of eighteen (18) years in the delivery or distribution of newspapers or shopping news not including delivery or distribution to any point for subsequent delivery or distribution.

(13) By an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

(14) By an individual for a real estate broker as an associate real estate broker or as a real estate salesman, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

(15) Service covered by an election approved by the agency charged with the administration of any other state or federal unemployment insurance law, in accordance with an arrangement pursuant to section 72-1344, Idaho Code.

(16) In the employ of a school or college by a student who is enrolled and regularly attending classes at such school or college.

(17) In the employ of a hospital by a resident patient of such hospital.

(18) By a member of an AmeriCorps program.

(19) By an individual who is paid less than fifty dollars ($50.00) per calendar quarter for performing work that is not in the course of the

employer's trade or business, and who is not regularly employed by such employer to perform such service. For the purposes of this subsection, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if:

(a) On each of some twenty-four (24) days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business; or

(b) Such individual was so employed by such employer in the performance of such service during the preceding calendar quarter.

(20) By an individual who is engaged in the trade or business of selling or soliciting the sale of consumer products in a private home or a location other than in a permanent retail establishment, provided the following criteria are met:

(a) Substantially all the remuneration, whether or not received in cash, for the performance of the services is directly related to sales or other output, including the performance of services, rather than to the number of hours worked; and

(b) The services performed by the individual are performed pursuant to a written contract between the individual and the person for whom the services are performed, and the contract provides that the individual shall not be treated as an employee for federal and state tax purposes.

Such exemption applies solely to the individual's engagement in the trade or business of selling or soliciting the sale of consumer products in a private home or location other than in a permanent retail establishment.

History.

I.C., § 72-1316A, as added by 1977, ch. 179, § 4, p. 464; am. 1978, ch. 112, § 1, p. 232; am. 1979, ch. 110, § 1, p. 348; am. 1982, ch. 326, § 4, p. 807; am. 1993, ch. 119, § 2, p. 297; am. 1997, ch. 363, § 1, p. 1070; am. 1998, ch. 1, § 18, p. 3; am. 2005, ch. 5, § 2, p. 6; am. 2009, ch. 70, § 1, p. 204; am. 2010, ch. 235, § 71, p. 542; am. 2013, ch. 261, § 1, p. 637.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 70, added subsection (20).

The 2010 amendment, by ch. 235, substituted "physical or mental limitation" for "physical or mental deficiency" in subsection (8).

The 2013 amendment, by ch. 261, added subsection (5)(f).

Federal References.

The social security act, referred to in subsection (10), is compiled as Title 42 U.S.C.S. § 301 et seq.

Effective Dates.

Section 2 of S.L. 2013, ch. 261 declared an emergency. Approved April 3, 2013.

72-1318. Director — Department. — "Director" means the director of the department of labor, the individual appointed pursuant to section 59-904, Idaho Code.

"Department" means the department of labor.

History.

1947, ch. 269, § 18, p. 793; am. 1949, ch. 144, § 18, p. 252; am. 1976, ch. 141, § 1, p. 517; am. 1998, ch. 1, § 21, p. 3; am. 2004, ch. 346, § 11, p. 1029; am. 2007, ch. 360, § 7, p. 1061.

STATUTORY NOTES

Amendments.
The 2007 amendment, by ch. 360, twice deleted "commerce and" following "department of."

72-1318A. Decision. — "Decision" means any written ruling made by the department's appeals bureau pursuant to section 72-1368(6), Idaho Code, or the commission pursuant to section 72-1368(7), Idaho Code.

History.
I.C., § 72-1318A, as added by 2010, ch. 114, § 1, p. 233.

STATUTORY NOTES

Effective Dates.
Section 7 of S.L. 2010, ch. 114 declared an emergency. Approved March 25, 2010.

72-1318B. Determination, revised determination, redetermination or special redetermination. — Except for determinations made pursuant to section 72-1349A(3), Idaho Code, and section 72-1382, Idaho Code, "determination," "revised determination," "redetermination" or "special redetermination" are written rulings by the department that include notice of appeal rights.

History.
I.C., § 72-1318B, as added by 2010, ch. 114, § 2, p. 233.

STATUTORY NOTES

Effective Dates.
Section 7 of S.L. 2010, ch. 114 declared an emergency. Approved March 25, 2010.

72-1333. Department of labor — Authority and duties of the director. — (1) The director shall administer the employment security law, chapter 13, title 72, Idaho Code, the minimum wage law, chapter 15, title 44, Idaho Code, the provisions of chapter 6, title 45, Idaho Code, relating to claims for wages, the provisions of section 44-1812, Idaho Code, relating to minimum medical and health standards for paid firefighters, the disability determinations service established pursuant to 42 U.S.C. 421, and shall perform such other duties relating to labor and workforce development as may be imposed upon him by law. The director shall be the successor in law to the office enumerated in section 1, article XIII, of the constitution of the state of Idaho. The director shall have the authority to employ individuals, make expenditures, require reports, make investigations, perform travel and take other actions deemed necessary. The director shall organize the department of labor which is hereby created, and which shall, for the purposes of section 20, article IV, of the constitution of the state of Idaho, be an executive department of the state government. The director shall have an official seal which shall be judicially noticed.

(2) The director shall have the authority pursuant to chapter 52, title 67, Idaho Code, to adopt, amend, or rescind rules as he deems necessary for the proper performance of all duties imposed upon him by law.

(3) Subject to the provisions of chapter 53, title 67, Idaho Code, the director is authorized and directed to provide for a merit system for the department covering all persons, except the director, the division administrators, employees of the Idaho career information system, and two (2) exempt positions to serve at the pleasure of the director.

(4) The director shall make recommendations for amendments to the employment security law and other laws he is charged to implement as he deems proper.

(5) The director shall have all the powers and duties as may have been or could have been exercised by his predecessors in law, except those powers and duties granted and reserved to the director of the department of commerce in titles 39, 49 and 67, Idaho Code, and he shall be the successor in law to all contractual obligations entered into by his predecessors in law, except for those contracts of the department of commerce, or contracts pertaining to any power or duty granted and reserved to the director of the department of commerce, in titles 39, 49 and 67, Idaho Code.

(6) The director shall provide administrative support for the commission on human rights pursuant to section 67-5905, Idaho Code.

History.
I.C., § 72-1333, as added by 2007, ch. 360, § 8, p. 1061; am. 2008, ch. 97, § 1, p. 263; am. 2010, ch. 248, § 4, p. 636.

STATUTORY NOTES

Amendments.
The 2008 amendment, by ch. 97, inserted "employees of the Idaho career information system" in subsection (3).

The 2010 amendment, by ch. 248, added subsection (6).

72-1336A. Youth employment and job training programs. — (1) Subject to the availability of funds from public and private sources and in consultation with the workforce development council, the director shall develop and implement youth employment and job training programs to increase employment opportunities for Idaho's youth.

(2) The director shall establish eligibility criteria for participants. At a minimum participants shall be lawful residents of the United States and the state of Idaho and eligibility criteria shall not render employment and job training programs ineligible for federal funding.

(3) The director may apply for and accept grants or contributions of funds from any public or private source.

(4) To the extent practicable, the director shall enlist state and federal agencies, local governments, nonprofit organizations, private businesses, and any combination of such entities to act as sponsors for programs administered pursuant to this section. Selection of sponsors shall be based on criteria that include the availability of other resources on a matching basis, including contributions from private sources, other federal, state and

local agencies, and moneys available through the federal workforce investment act of 1998, 29 U.S.C. section 2801, et seq., as amended.

(5) Programs developed and implemented under this section shall:

(a) Result in an increase in employment opportunities for youth that would not otherwise be available;

(b) Not result in the displacement or partial displacement of currently employed workers;

(c) Not impair existing contracts for services or result in the substitution of funds available under this section for other funds in connection with work that would otherwise be performed;

(d) Not substitute jobs that are assisted pursuant to this section for existing federally assisted jobs;

(e) Not employ any person when any other person is on layoff by an employer from the same or any substantially equivalent job in the same area; and

(f) Not be used to employ any person to fill a job opening created by the act of an employer in laying off or terminating employment of any regular employee in anticipation of filling the vacancy by hiring a person to be supported pursuant to this section.

(6) Participants in youth employment and job training programs under this section shall not be employees of the state of Idaho entitled to personnel benefits under the state personnel system, chapter 53, title 67, Idaho Code.

History.
I.C., § 72-1336A, as added by 2010, ch. 276, § 1, p. 716.

STATUTORY NOTES

Effective Dates.
Section 2 of S.L. 2010, ch. 276 declared an emergency. Approved April 8, 2010.

72-1342. Disclosure of information. — Employment security information, as defined in section 9-340C(7), Idaho Code, shall be exempt from disclosure as provided in chapter 3, title 9, Idaho Code, except that such information may be disclosed as is necessary for the proper administration of programs under this chapter or may be made available to public officials for use in the performance of official duties subject to such restrictions and fees as the director may by rule prescribe. The director may by rule prescribe the form of written, informed consent by a person that is adequate for disclosure of employment security information pertaining to that person to a third party, as provided in section 9-340C(7), Idaho Code, and the security requirements and cost provisions that apply to such disclosures.

History.
1947, ch. 269, § 42, p. 793; am. 1949, ch. 144, § 42, p. 252; am. 1949, ch. 272, § 3, p. 551; am. 1951, ch. 104, § 10, p. 233; am. 1972, ch. 344, § 2, p. 998; am. 1977, ch. 179, § 11, p. 464; am. 1982, ch. 326, § 6, p. 807; am. 1990, ch. 213, § 109, p. 480; am. 1993, ch. 10, § 1, p. 30; am. 1998, ch. 1, § 52, p. 3; am. 2008, ch. 99, § 1, p. 270.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 99, rewrote the first sentence, which formerly read: "Information obtained from any employer or individual pursuant to the administration of this chapter, and determinations of the benefit rights of any individual shall be subject to disclosure as provided in chapter 3, title 9, Idaho Code, except that such information may be made available to public employees in the performance of their public duties subject to such restrictions and fees as the director may by rule prescribe"; and added the last sentence.

72-1345A. Idaho career information system. — The Idaho career information system is hereby established within the department to provide current and accurate occupational, educational and related career information to help Idaho citizens understand the link between educational preparation and work, explore education and career alternatives, and successfully seek work. The Idaho career information system shall be responsible for carrying out the duties required by section 118 of the Carl D. Perkins career and technical education act of 2006 (20 U.S.C. 2328(c)), as amended. All moneys received by the Idaho career information system for its products and services shall be deposited in the career information system account, which is hereby established in the state treasury, subject to appropriation. Employees of the Idaho career information system shall be nonclassified employees exempt from the provisions of chapter 53, title 67, Idaho Code. The workforce development council established pursuant to section 72-1336, Idaho Code, shall serve as an advisory body to the department on matters related to the Idaho career information system.

History.

I.C., § 72-1345A, as added by 2008, ch. 97, § 2, p. 264.

72-1346. Employment security fund. — (1) Establishment and Control. There is established in the state treasury, separate and apart from all other funds of this state, an "Employment Security Fund," which shall be perpetually appropriated to the director to be administered pursuant to the provisions of this chapter and the social security act. This fund shall consist of all contributions collected pursuant to this chapter, payments in lieu of contributions, interest earned upon any moneys in the fund, any property or securities acquired through the use of moneys belonging to the fund, all earnings of such property or securities, moneys temporarily deposited in the clearing account, and all other moneys received for the fund from any other source.

(2) Accounts and Deposits. The state controller shall maintain within the fund three (3) separate accounts: (i) a clearing account, (ii) an unemployment trust fund account, and (iii) a benefit account. Upon receipt by the director, all moneys payable to the fund shall be promptly forwarded to the state treasurer for immediate deposit in the clearing account. After clearance, all moneys in the clearing account shall, except as otherwise provided, be deposited promptly with the secretary of the treasury of the United States to the credit of this state's account in the federal unemployment trust fund established and maintained pursuant to section 904 of the social

security act (42 U.S.C. 1104), any provisions of law in this state to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned for the payment of benefits from this state's account in the federal unemployment trust fund. Moneys in the clearing and benefit accounts may be deposited by the state treasurer under the direction of the director in any depository bank in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. Moneys in the clearing and benefit accounts shall not be commingled with other state funds and shall be maintained in separate accounts on the books of the depository bank. Such moneys shall be secured by the depository bank in the same manner as required by the general public depository law of this state and collateral pledged for this purpose shall be kept separate and distinct from collateral pledged to secure other funds of the state. The state treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the employment security fund.

(3) Withdrawals. Moneys requisitioned by the director through the treasurer from this state's account in the federal unemployment trust fund shall be used exclusively for the payment of benefits and for refunds pursuant to section 72-1357, Idaho Code, except that Reed act moneys credited to this state's account pursuant to section 903 of the social security act (42 U.S.C. 1103), shall be used exclusively as provided in subsection (4) of this section. The director through the treasurer shall requisition from the federal unemployment trust fund such amounts, not exceeding the amounts standing to this state's account therein, as he deems necessary for the payment of benefits and refunds for a reasonable period. Upon receipt, such moneys shall be deposited in the benefit account. Expenditures of moneys in the benefit and clearing accounts shall not require the approval of the board of examiners or be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. The residual daily balance in the benefit account may be invested in accordance with the cash management improvement act of 1990, and earnings on those investments may be used to pay the related banking costs of maintaining the benefit account. Any earnings in excess of the related banking costs shall be returned to the state's account in the federal unemployment trust fund annually. All warrants issued for the payment of benefits and refunds shall bear the signature of the director. Upon agreement between the director and state controller, amounts in the benefit account may be transferred to a revolving account established and maintained in a depository bank from which the director may provide for the payment of benefits and refunds. Moneys so transferred shall be deposited subject to the same requirements as provided with respect to moneys in the clearing and benefit accounts in subsection (2) of this section. Any balance of moneys requisitioned from the federal unemployment trust fund which remains unclaimed or unpaid in the benefit account or revolving account after the expiration of the period for which such sums were requisitioned, may be utilized for the payment of benefits and refunds during succeeding periods, or, in the discretion of the director, shall be redeposited with the

secretary of the treasury of the United States to the credit of this state's account in the federal unemployment trust fund.

(4) Reed Act Moneys. Reed act moneys credited to this state's account in the federal unemployment trust fund by the secretary of the treasury of the United States pursuant to section 903 of the social security act (42 U.S.C. 1103) may be requisitioned and used for the payment of benefits and for the payment of expenses incurred for the administration of this chapter. Moneys may only be requisitioned and used for the payment of expenses incurred for the administration of this chapter if the expenses are incurred and the money is requisitioned after the enactment of a specific appropriation by the legislature which specifies the purposes for which such money is appropriated and the amounts appropriated therefor. Such appropriation is subject to the following conditions:

(a) Such money may not be obligated after the close of the two (2) year period which began on the date of the enactment of the appropriation law; and

(b) The amount which may be obligated at any time may not exceed the amount by which the aggregate of the amounts transferred to the account of this state pursuant to section 903 of the social security act (42 U.S.C. 1103) exceeds the aggregate of the amounts used by this state and charged against the amounts transferred to the account of this state. For the purposes of this subsection, amounts obligated for administrative purposes pursuant to an appropriation shall be chargeable against transferred amounts at the exact time the obligation is entered into.

(5) Reed act moneys requisitioned for the payment of benefits shall be deposited in the benefit account established in this section. Reed act moneys requisitioned for the payment of administrative expenses pursuant to a specific appropriation shall be deposited in the employment security administration fund, section 72-1347, Idaho Code, except that moneys appropriated for the purchase of lands and buildings shall be deposited in the state employment security administrative and reimbursement fund in accordance with section 72-1348, Idaho Code. Money so deposited shall, until expended, remain part of the employment security fund and, if not expended, shall be promptly returned to this state's account in the federal unemployment trust fund.

History.

1947, ch. 269, § 46, p. 793; am. 1949, ch. 144, § 46, p. 252; am. 1957, ch. 157, § 1, p. 267; am. 1969, ch. 170, § 1, p. 504; am. 1971, ch. 136, § 50, p. 522; am. 1972, ch. 144, § 1, p. 311; am. 1976, ch. 207, § 3, p. 754; 1976, ch. 51, § 20, p. 152; am. 1983, ch. 146, § 2, p. 382; am. 1993, ch. 119, § 3, p. 297; am. 1994, ch. 180, § 238, p. 420; am. 1998, ch. 1, § 56, p. 3; am. 1999, ch. 101, § 1, p. 315; am. 2001, ch. 32, § 1, p. 48; am. 2004, ch. 24, § 2, p. 32; am. 2010, ch. 114, § 3, p. 233.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 114, substituted "provide for the payment of benefits and refunds" for "issue checks for the payment of benefits and refunds" in the second-to-last sentence in subsection (3).

Effective Dates.

Section 7 of S.L. 2010, ch. 114 declared an emergency. Approved March 25, 2010.

72-1346B. Unemployment benefit bonds. — (1) The Idaho housing and finance association, upon the request from and agreement with the director, may contract indebtedness and issue or cause to be issued unemployment benefit bonds or notes evidencing such indebtedness in conformity with chapter 62, title 67, Idaho Code, for the benefit of the department when the director determines that the issuance of bonds for the repayment of federal advances under title XII of the social security act, 42 U.S.C. section 1321 et seq., will result in a savings to the state and to the state's employers.

(2) Until unemployment benefit bonds and notes as authorized in this section and chapter 62, title 67, Idaho Code, have been paid in full, the following provisions shall apply:

(a) In addition to the requirements of section 72-1347A, Idaho Code, within the employment security reserve fund there is created a bond principal payment account and a bond interest payment account. Fifty million dollars ($50,000,000) is hereby appropriated to the bond principal payment account and twenty million dollars ($20,000,000) is hereby appropriated to the bond interest payment account. Moneys in the bond principal payment account shall be used solely for the payment of bond and note principal and moneys in the bond interest payment account shall be used solely for the payment of bond and note interest and other amounts required for the unemployment benefit bonds or notes issued by the Idaho housing and finance association in accordance with this section and chapter 62, title 67, Idaho Code.

(b) Moneys in the bond principal payment account and the bond interest payment account are continuously appropriated in such amounts and at such times as, from time to time, shall be certified by the Idaho housing and finance association to the director, the state treasurer and the state controller as necessary for the payment of principal, interest and other amounts required for unemployment benefit bonds or notes issued by the Idaho housing and finance association in accordance with this section and chapter 62, title 67, Idaho Code, which amounts shall be paid over as directed by the association.

(c) Moneys paid out of the bond principal payment account for principal payments on unemployment benefit bonds or notes shall be repaid from the benefit account in the employment security fund, section 72-1346(2), Idaho Code, out of revenue the department derives from employer contributions payable under sections 72-1349 and 72-1350, Idaho Code.

(d) Moneys paid out of the benefit account to the bond principal payment account as authorized in this section shall be made as soon as possible and in such amounts as deemed necessary by the director to provide funds for the appropriations contained herein to make subsequent principal payments on unemployment benefit bonds or notes when due.

(e) At any time the balance in the benefit account reaches zero (0), the director shall immediately requisition funds from the state's account in the federal unemployment trust fund, and if funds therein are not then sufficient to pay unemployment insurance benefits, the director shall immediately obtain advances from the federal unemployment account in the unemployment trust fund as provided for in section 72-1346A, Idaho Code.

History.
I.C., § 72-1346B, as added by 2011, ch. 111, § 4, p. 292.

STATUTORY NOTES

Effective Dates.
Section 7 of S.L. 2011, ch. 111 declared an emergency. Approved March 22, 2011.

72-1347A. Employment security reserve fund — Special administration fund. — (1) There is established in the state treasury a special trust fund, separate and apart from all other public funds of this state, to be known as the employment security reserve fund, hereinafter "reserve fund." Except as provided herein, all proceeds from the reserve tax defined in subsection (2) of this section shall be paid into the reserve fund. The moneys in the reserve fund may be used by the director for loans to the employment security fund, section 72-1346, Idaho Code, as security for loans from the federal unemployment insurance trust fund, and for the repayment of any interest bearing advances, including interest, made under title XII of the social security act, 42 USC 1321 through 1324, and shall be available to the director for expenditure in accordance with the provisions of this section. The state treasurer shall be the custodian of the reserve fund and shall invest said moneys in accordance with law. The state treasurer shall disburse the moneys from the reserve fund in accordance with the directions of the director.

(2) A reserve tax is imposed on all covered employers required to pay contributions pursuant to section 72-1350, Idaho Code, except deficit employers who have been assigned a taxable wage rate from deficit rate class six pursuant to section 72-1350(8)(a), Idaho Code. The reserve tax shall be due and payable at the same time and in the same manner as contributions. If the reserve fund is less than one percent (1%) of state taxable wages in the penultimate year as of September 30 of the preceding calendar year, the reserve tax rate for all eligible, standard-rated and deficit employers shall be equal to the taxable wage rate then in effect less the assigned contribution rate and training tax rate. The provisions of this chapter which apply to the payment and collection of contributions also apply to the payment and collection of the reserve tax, including the same calculations, assessments, method of payment, penalties, interest, costs, liens, injunctive relief, collection procedures and refund procedures. In the administration of the provisions of this section and the collection of the reserve tax, the director is granted all rights, authority, and prerogatives granted the director under the provisions of this chapter. Moneys collected from an employer delinquent in paying contributions and reserve taxes shall first be applied to pay any penalty and interest imposed pursuant to the provisions of this chapter and shall then be applied pro rata to pay delinquent contributions to the employment security fund, section 72-1346, Idaho Code, and delinquent reserve taxes to the reserve fund pursuant to this section. Any interest and penalties collected pursuant to this subsection shall be paid into the state employment security administrative and reimbursement fund, section 72-

1348, Idaho Code, and any interest or penalties refunded under this subsection shall be paid out of that same fund. Reserve taxes paid pursuant to this subsection may not be deducted in whole or in part by any employer from the wages of individuals in its employ. All reserve taxes collected pursuant to this subsection shall be deposited in the clearing account of the employment security fund, section 72-1346, Idaho Code, for clearance only and shall not become part of such fund. After clearance, the moneys shall be deposited in the reserve fund established in subsection (1) of this section. No reserve tax shall be imposed for any calendar year if, as of September 30 of the preceding calendar year, the balance of the reserve fund equals or exceeds one percent (1%) of the state taxable wages for the penultimate calendar year, or exceeds forty-nine percent (49%) of the actual balance of the employment security fund, section 72-1346, Idaho Code. Provided however, and notwithstanding any other provisions of this subsection, for calendar year 2006, the imposition of a reserve tax shall not be precluded even if the balance of the reserve fund exceeds forty-nine percent (49%) of the actual balance of the employment security fund.

(3) The interest earned from investment of the reserve fund shall be deposited in a fund established in the state treasurer's office, to be known as the department of labor special administration fund, hereinafter "special administration fund." The moneys in the special administration fund shall be held separate and apart from all other public funds of this state. The state treasurer shall be the custodian of this fund and may invest said moneys in accordance with law. Any interest earned on said moneys shall be deposited in the special administration fund. In the absence of a specific appropriation, the moneys in the special administration fund are perpetually appropriated to the director and may be expended with the approval of the advisory council appointed pursuant to section 72-1336, Idaho Code, for costs related to programs administered by the department. The director shall report annually to the joint finance-appropriations committee and the advisory council the expenditures and disbursements made from the fund during the preceding fiscal year, and the expenditures and disbursements and commitments made during the current fiscal year to date.

(4) Administrative costs related to the reserve fund and the special administration fund shall be paid from federal administrative grants received under title III of the social security act, to the extent permitted by federal law, and then from the special administration fund.

History.

I.C., § 72-1347A, as added by 1991, ch. 119, § 5, p. 248; am. 1995, ch. 98, § 1, p. 289; am. 1996, ch. 415, § 2, p. 1378; am. 1998, ch. 1, § 59, p. 3; am. 2005, ch. 5, § 5, p. 6; am. 2006, ch. 48, § 1, p. 139; am. 2007, ch. 360, § 9, p. 1061.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 360, deleted "commerce and" following "department of" in the first sentence in subsection (3).

72-1347B. Workforce development training fund. — (1) There is established in the state treasury a special trust fund, separate and apart

from all other public funds of this state, to be known as the workforce development training fund, hereinafter "training fund." Except as provided herein, all proceeds from the training tax defined in subsection (4) of this section shall be paid into the training fund. The state treasurer shall be the custodian of the training fund and shall invest said moneys in accordance with law. Any interest earned on the moneys in the training fund shall be deposited in the training fund. Moneys in the training fund shall be disbursed in accordance with the directions of the director. In any month when the unencumbered balance in the training fund exceeds six million dollars ($6,000,000), the excess amount over six million dollars ($6,000,000) shall be transferred to the employment security reserve fund, section 72-1347A, Idaho Code. For the purposes of this subsection (1), the unencumbered balance in the training fund is the balance in such fund reduced by the sum of:

(a) The amounts that have been obligated pursuant to fully-executed workforce development training fund contracts; and

(b) Any administrative costs related to the training fund that are due and payable.

(2) All moneys in the training fund are perpetually appropriated to the director for expenditure in accordance with the provisions of this section. The purpose of the training fund is to provide or expand training and retraining opportunities in an expeditious manner that would not otherwise exist for Idaho's workforce. The training fund is intended to supplement, but not to supplant or compete with, money available through existing training programs. The moneys in the training fund shall be used for the following purposes:

(a) To provide training for skills necessary for specific economic opportunities and industrial expansion initiatives;

(b) To provide training to upgrade the skills of currently employed workers at risk of being permanently laid off;

(c) For refunds of training taxes erroneously collected and deposited in the workforce training fund;

(d) For all administrative expenses incurred by the department associated with the collection of the training tax and any other administrative expenses associated with the training fund.

(3) Expenditures from the training fund for purposes authorized in paragraphs (a) and (b) of subsection (2) of this section shall be approved by the director, and the director of the department of commerce, in consultation with the office of the governor, based on procedures, criteria and performance measures established by the council appointed pursuant to section 72-1336, Idaho Code. The activities funded by the training fund will be coordinated with similar activities funded by the state division of professional-technical education. Expenditures from the training fund for purposes authorized in paragraphs (c) and (d) of subsection (2) of this section shall be approved by the director. The director shall pay all approved expenditures as long as the training fund has a positive balance. The council shall report annually to the governor and the joint finance-appropriations committee the commitments and expenditures made from the training fund

in the preceding fiscal year and the results of the activities funded by the training fund.

(4) A training tax is hereby imposed on all covered employers required to pay contributions pursuant to section 72-1350, Idaho Code, with the exception of deficit employers who have been assigned a taxable wage rate from rate class six pursuant to section 72-1350, Idaho Code. The training tax rate shall be equal to three percent (3%) of the taxable wage rate then in effect for each eligible, standard-rated and deficit employer. The training tax shall be due and payable at the same time and in the same manner as contributions. This subsection is repealed effective January 1, 2018, unless, prior to that date, the Idaho legislature approves the continuation of this subsection by repeal of this sunset clause.

(5) The provisions of this chapter which apply to the payment and collection of contributions also apply to the payment and collection of the training tax, including the same calculations, assessments, method of payment, penalties, interest, costs, liens, injunctive relief, collection procedures and refund procedures. In the administration of the provisions of this section, the director is granted all rights, authority, and prerogatives granted under the provisions of this chapter. Moneys collected from an employer delinquent in paying contributions, reserve taxes and the training tax shall first be applied to any penalty and interest imposed pursuant to the provisions of this chapter and shall then be applied pro rata to delinquent contributions to the employment security fund, section 72-1346, Idaho Code, delinquent reserve taxes to the reserve fund, section 72-1347A, Idaho Code, and delinquent training taxes to the training fund. Any interest and penalties collected pursuant to this subsection shall be paid into the state employment security administrative and reimbursement fund, section 72-1348, Idaho Code, and any interest or penalties refunded under this subsection shall be paid out of that same fund. Training taxes paid pursuant to this section shall not be credited to the employer's experience rating account and may not be deducted by any employer from the wages of individuals in its employ. All training taxes shall be deposited in the clearing account of the employment security fund, section 72-1346, Idaho Code, for clearance only and shall not become part of such fund. After clearance, the moneys shall be deposited in the training fund established in subsection (1) of this section.

(6) Administrative costs related to the training fund shall be paid from the training fund in accordance with subsection (3) of this section.

History.

I.C., § 72-1347B, as added by 1996, ch. 415, § 3, p. 1378; am. 1998, ch. 1, § 60, p. 3; am. 1999, ch. 329, § 41, p. 852; am. 2001, ch. 19, § 1, p. 24; am. 2004, ch. 346, § 12, p. 1029; am. 2005, ch. 5, § 6, p. 6; am. 2006, ch. 13, § 1, p. 31; am. 2007, ch. 90, § 33, p. 246; am. 2007, ch. 360, § 10, p. 1061; am. 2011, ch. 65, § 1, p. 139.

STATUTORY NOTES

Amendments.

This section was amended by two 2007 acts which appear to be compatible and have been compiled together.

The 2007 amendment, by ch. 90, in subsection (4), substituted "January 1, 2012" for "January 1, 20012."

The 2007 amendment, by ch. 360, in subsection (3), inserted "and the director of the department of commerce" in the first sentence; and in subsection (4), substituted "January 1, 2012" for "January 1, 20012."

The 2011 amendment, by ch. 65, deleted former paragraph (1)(b), which read: "The amounts that have been obligated pursuant to letters of intent for proposed job training projects" and redesignated former paragraph (1)(c) as (1)(b), and substituted "January 1, 2018" for "January 1, 2012" in the last sentence of subsection (4).

72-1349. Payment of contributions — Limitation of actions. — (1) Contributions shall be reported and paid to the department on taxable wages for each calendar year equal to the amount determined in accordance with section 72-1350, Idaho Code. Contributions on wages paid to an individual under another state unemployment insurance law, or paid by an employer's predecessor during the calendar year, shall be counted in complying with this provision.

(2) Contributions shall accrue and become reportable and payable to the department by each covered employer for each calendar quarter with respect to wages for covered employment. Such contributions shall become due and be paid by each covered employer to the director for the employment security fund and shall not be deducted from the wages of individuals employed by such employer. All moneys required to be paid by a covered employer pursuant to this chapter shall immediately, upon becoming due and payable, become or be deemed money belonging to the state, and every covered employer shall hold or be deemed to hold said money separately, aside, or in trust from any other funds, moneys or accounts, for the state of Idaho for payment in the manner and at the times provided by law.

(3) The contributions reportable and payable to the department by each covered employer, with respect to covered employment, accruing in each calendar quarter, shall be reported and paid to the department on or before the last day of the month following the close of said calendar quarter.

(4) The director may, for good cause shown by a covered employer, extend the time for payment of his contributions or any part thereof, but no such extension of time shall postpone the due date more than sixty (60) days. Contributions with respect to which an extension of time for payment has been granted shall be paid on or before the last day of the period of the extension.

(5) Whenever it appears to be essential to the proper administration of this chapter that collection of the contributions of a covered employer must be made more often than quarterly, the director shall have authority to demand payment of the contributions forthwith.

(6) In accordance with rules the director may prescribe, any person or persons entering into a formal contract with the state, any county, city, town, school or irrigation district, or any quasi-public corporation of the state, for the construction, alteration, or repair of any public building or public work, the contract price of which exceeds the sum of one thousand dollars ($1,000) may be required before commencing such work, to execute a surety bond in an amount sufficient to cover contributions when due. If the director, who shall approve said bond, determines that said bond has become insufficient, he may require that a new bond be provided in the amount he

directs. Failure on the part of the employer covered by the bond to pay the full amount of his contributions when due shall render the surety liable on said bond as though the surety was the employer and subject to the other provisions of this chapter.

(7) In the payment of any contributions a fractional part of a dollar shall be disregarded unless it amounts to fifty cents (50¢) or more, in which case it shall be increased to one dollar ($1.00).

(8) The director may commence administrative proceedings to enforce the provisions of this section by issuing a determination at any time within five (5) years of the due date of a quarterly report or the date a quarterly report is filed, whichever is later. The limitation period of this subsection (8) is tolled during any period in which the employer absconds from the state, during any period of the employer's concealment, or during any period when the department's ability to commence administrative proceedings to enforce the provisions of this section is stayed by legal proceedings.

History.

1947, ch. 269, § 49, p. 793; am. 1949, ch. 144, § 49, p. 252; am. 1951, ch. 104, § 13, p. 233; am. 1959, ch. 32, § 1, p. 68; am. 1971, ch. 142, § 10, p. 595; am. 1972, ch. 344, § 3, p. 998; am. 1975, ch. 126, § 3, p. 259; am. 1976, ch. 141, § 4, p. 517; am. 1976, ch. 207, § 4, p. 754; am. 1977, ch. 179, § 12, p. 464; am. 1998, ch. 1, § 62, p. 3; am. 2005, ch. 5, § 7, p. 6; am. 2010, ch. 114, § 4, p. 233.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 114, in the section heading, added "limitation of actions"; in subsections (1) through (3), inserted "to the department"; in subsections (1) and (3), inserted "reported and"; and in subsections (2) and (3), inserted "reportable and"; and added subsection (8).

Effective Dates.

Section 7 of S.L. 2010, ch. 114 declared an emergency. Approved March 25, 2010.

72-1350. Taxable wage base and taxable wage rates. — (1) All remuneration for personal services as defined in section 72-1328, Idaho Code, equal to the average annual wage in covered employment for the penultimate calendar year, rounded to the nearest multiple of one hundred dollars ($100), or the amount of taxable wage base specified in the federal unemployment tax act, whichever is higher, shall be the taxable wage base for purposes of this chapter.

(2) Prior to December 31 of each year, the director shall determine the taxable wage rates for the following calendar year for all covered employers, except cost reimbursement employers, in accordance with this section, provided however, and notwithstanding any other provision of the employment security law to the contrary, for calendar years 2005 and 2006, the taxable wage rates for all covered employers except cost reimbursement employers shall be determined as follows:

(a) For calendar year 2005, the taxable wage rate shall be determined using a base tax rate of one and fifty hundredths percent (1.50%);

(b) For calendar year 2006, the taxable wage rate shall be determined using a base tax rate of one and sixty-seven hundredths percent (1.67%) unless, at any time prior to September 30, 2005, the actual balance in the employment security fund, section 72-1346, Idaho Code, is fifty percent

(50%) or less than the actual balance in the reserve fund, section 72-1347A, Idaho Code, in which case the taxable wage rate shall be determined using a base tax rate calculated in accordance with subsection (5) of this section.

(3) An average high cost ratio shall be determined by calculating the average of the three (3) highest benefit cost rates in the twenty (20) year period ending with the preceding year. For the purposes of this section, the "benefit cost rate" is the total annual benefits paid, including the state's share of extended benefits but excluding the federal share of extended benefits and cost reimbursable benefits, divided by the total annual covered wages excluding cost reimbursable wages. The resulting average high cost ratio is multiplied by the desired fund size multiplier and the result, for the purposes of this section, is referred to as the "average high cost multiple" (AHCM). The desired fund size multiplier shall be eight tenths (0.8) and shall increase to nine tenths (0.9) on and after January 1, 2012; to one (1) on and after January 1, 2013; to one and one-tenth (1.1) on and after January 1, 2014; to one and two-tenths (1.2) on and after January 1, 2015; to one and three-tenths (1.3) on and after January 1, 2016; to one and four-tenths (1.4) on and after January 1, 2017; and to one and five-tenths (1.5) on and after January 1, 2018.

(4) The fund balance ratio shall be determined by dividing the actual balance of the employment security fund, section 72-1346, Idaho Code, and the reserve fund, section 72-1347A, Idaho Code, on September 30 of the current calendar year by the wages paid by all covered employers in Idaho, except cost reimbursement employers, in the preceding calendar year.

(5) The base tax rate shall be determined as follows:

(a) Divide the fund balance ratio by the AHCM;

(b) Subtract the quotient obtained from the calculation in paragraph (5)(a) of this section from the number two (2);

(c) Multiply the remainder obtained from the calculation in paragraph (5)(b) of this section by two and one-tenth percent (2.1%). The product obtained from this calculation shall equal the base tax rate, provided however, that the base tax rate shall not be less than sixty-three hundredths percent (0.63%) and shall not exceed three and thirty-six hundredths percent (3.36%).

(6) The base tax rate calculated in accordance with subsection (5) of this section shall be used to determine the taxable wage rate effective the following calendar year for all covered employers except cost reimbursement employers as provided in subsections (7) and (8) of this section.

(7) Table of Rate Classes, Tax Factors and Minimum and Maximum Taxable Wage Rates

Cumulative Taxable Payroll Limits				Eligible Employers	
Rate Class	More Than (% of Taxable Payroll)	Equal to or Less Than (% of Taxable Payroll)	Tax Factor	Minimum Taxable Wage Rate	Maximum Taxable Wage Rate
1	—	12	0.2857	0.180%	0.960%
2	12	24	0.4762	0.300%	1.600%

Cumulative Taxable Payroll Limits				Eligible Employers	
Rate Class	More Than (% of Taxable Payroll)	Equal to or Less Than (% of Taxable Payroll)	Tax Factor	Minimum Taxable Wage Rate	Maximum Taxable Wage Rate
3	24	36	0.5714	0.360%	1.920%
4	36	48	0.6667	0.420%	2.240%
5	48	60	0.7619	0.480%	2.560%
6	60	72	0.8571	0.540%	2.880%
7	72	—	0.9524	0.600%	3.200%

Standard-Rated Employers		
Tax Factor	Minimum Taxable Wage Rate	Maximum Taxable Wage Rate
1.000	1.000%	3.360%

Cumulative Taxable Payroll Limits				Deficit Employers	
Rate Class	More Than (% of Taxable Payroll)	Equal to or Less Than (% of Taxable Payroll)	Tax Factor	Minimum Taxable Wage Rate	Maximum Taxable Wage Rate
-1	—	30	1.7143	1.080%	4.800%
-2	30	50	1.9048	1.200%	5.200%
-3	50	65	2.0952	1.320%	5.600%
-4	65	80	2.2857	1.440%	6.000%
-5	80	95	2.6667	1.680%	6.400%
-6	95	—	2.6667	5.400%	6.800%

(8) Each covered employer, except cost reimbursement employers, will be assigned a taxable wage rate and a contribution rate as follows:

(a) Each employer, except standard-rated employers, will be assigned to one (1) of the rate classes for eligible and deficit employers provided in subsection (7) of this section based upon the employer's experience as determined under the provisions of sections 72-1319, 72-1319A, 72-1351 and 72-1351A, Idaho Code.

(b) For each rate class provided in subsection (7) of this section, the department will multiply the base tax rate determined in accordance with subsection (5) of this section by the tax factor listed for that rate class in the table provided in subsection (7) of this section. The product obtained from this calculation shall be the taxable wage rate for employers assigned to that rate class, provided however, that the taxable wage rate shall not be less than the minimum taxable wage rate assigned to that rate class and shall not exceed the maximum taxable wage rate assigned to that rate class in the table provided in subsection (7) of this section.

(c) For standard-rated employers, the department will multiply the base tax rate determined in accordance with subsection (5) of this section by the tax factor listed for standard-rated employers in the table provided in subsection (7) of this section. The product obtained from this calculation shall be the taxable wage rate for standard-rated employers, provided however, that the taxable wage rate shall not be less than the minimum

taxable wage rate assigned to standard-rated employers and shall not exceed the maximum taxable wage rate assigned to standard-rated employers in the table provided in subsection (7) of this section.

(d) Deficit employers who have been assigned a taxable wage rate from deficit rate class six will be assigned contribution rates equal to their taxable wage rate.

(e) All other eligible, standard-rated and deficit employers will be assigned contribution rates equal to ninety-seven percent (97%) of their taxable wage rate. Provided however, that for each calendar year a reserve tax is imposed pursuant to section 72-1347A, Idaho Code, the contribution rates for employers assigned contribution rates pursuant to this paragraph shall be eighty percent (80%) of their taxable wage rate.

(9) Each employer shall be notified of his taxable wage rate as determined for any calendar year pursuant to this section and section 72-1351, Idaho Code. Such determination shall become conclusive and binding upon the employer, unless within fourteen (14) days after delivery or mailing of the notice thereof to his last known address, the employer files an application for redetermination, setting forth his reasons therefor. Reconsideration shall be limited to transactions occurring subsequent to any previous determination which has become final. The employer shall be promptly notified of the redetermination, which shall become final unless an appeal is filed within fourteen (14) days after delivery or mailing of notice to his last known address. Proceedings on the appeal shall be in accordance with the provisions of section 72-1361, Idaho Code.

History.

I.C., § 72-1350, as added by 1983, ch. 146, § 5, p. 382; am. 1985, ch. 203, § 1, p. 506; am. 1986, ch. 23, § 1, p. 68; am. 1987, ch. 317, § 1, p. 666; am. 1989, ch. 55, § 1, p. 78; am. 1989, ch. 198, § 1, p. 496; am. 1991, ch. 119, § 6, p. 248; am. 1995, ch. 98, § 2, p. 289; am. 1996, ch. 415, § 4, p. 1378; am. 1997, ch. 271, § 1, p. 786; am. 1998, ch. 1, § 66, p. 3; am. 1999, ch. 101, § 2, p. 315; am. 2001, ch. 18, § 1, p. 21; am. 2003, ch. 2, § 1, p. 3; am. 2005, ch. 5, § 8, p. 6; am. 2011, ch. 111, § 5, p. 292.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 111, in subsection (3), deleted "of eight-tenths (0.8)" following "fund size multiplier" in the third sentence and added the last sentence.

Compiler's Notes.

Section 6 of S.L. 2011, ch. 111 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 7 of S.L. 2011, ch. 111 declared an emergency. Approved March 22, 2011.

72-1351. Experience rating and voluntary transfers of experience rating accounts. — (1) Subject to the other provisions of this chapter, each eligible and deficit employer's, except cost reimbursement employers, taxable wage rate shall be determined in the manner set forth below for each calendar year:

(a)(i) Each eligible employer shall be given an "experience factor" which shall be the ratio of excess of contributions over benefits paid on the employer's account since December 31, 1939, to his average annual

taxable payroll rounded to the next lower dollar amount for the four (4) fiscal years immediately preceding the computation date, except that when an employer first becomes eligible, his "experience factor" will be computed on his average annual taxable payroll for the two (2) fiscal years or more, but not to exceed four (4) fiscal years, immediately preceding the computation date. The computation of such "experience factor" shall be to six (6) decimal places.

(ii) Each deficit employer shall be given a "deficit experience factor" which shall be the ratio of excess of benefits paid on the employer's account over contributions since December 31, 1939, to his average annual taxable payroll rounded to the next lower dollar amount for one (1) or more fiscal years, but not to exceed four (4) fiscal years, for which he had covered employment ending on the computation date; provided, however, that any employer who on any computation date has a "deficit experience factor" for the period immediately preceding such computation date but who has filed all reports, paid all contributions and penalties due on or before the cut-off date, and has during the last four (4) fiscal years paid contributions at a rate of not less than the standard rate applicable for each such year and in excess of benefits charged to his experience rating account during such years, shall have any balance of benefits charged to his account which on the computation date immediately preceding such four (4) fiscal years was in excess of contributions paid, deleted from his account, and the excess benefits so deleted shall not be considered in the computation of his taxable wage rate for the rate years following such four (4) fiscal years. For the rate year following such computation date, he shall be given the standard rate for that year.

(iii) In the event an employer's coverage has been terminated because he has ceased to do business or because he has not had covered employment for a period of four (4) years, and if said employer thereafter becomes a covered employer, he will be considered as though he were a new employer, and he shall not be credited with his previous experience under this chapter for the purpose of computing any future "experience factor."

(iv) Benefits paid to a claimant whose employment terminated because the claimant's employer was called to active military duty shall not be used as a factor in determining the taxable wage rate of that employer.

(b) Schedules shall be prepared listing all eligible employers in inverse numerical order of their experience factors, and all deficit employers in numerical order of their deficit experience factors. There shall be listed on such schedules for each such employer in addition to the experience factor: (i) the amount of his taxable payroll for the fiscal year ending on the computation date, and (ii) a cumulative total consisting of the sum of such employer's taxable payroll for the fiscal year ending on the computation date and the corresponding taxable payrolls for all other employers preceding him on such schedules.

(c) The cumulative taxable payroll amounts listed on the schedules provided for in paragraph (b) of this subsection shall be segregated into

groups whose limits shall be those set out in the table provided in section 72-1350(7), Idaho Code. Each of such groups shall be identified by the rate class number listed in the table which represents the percentage limits of each group. Each employer on the schedules shall be assigned a taxable wage rate in accordance with section 72-1350, Idaho Code.

(d)(i) If the grouping of rate classes requires the inclusion of exactly one-half (1/2) of an employer's taxable payroll, the employer shall be assigned the lower of the two (2) rates designated for the two (2) classes in which the halves of his taxable payroll are so required.

(ii) If the group of rate classes requires the inclusion of a portion other than exactly one-half (1/2) of an employer's taxable payroll, the employer shall be assigned the rate designated for the class in which the greater part of his taxable payroll is so required.

(iii) If one (1) or more employers on the schedules have experience factors identical to that of the last employer included in a particular rate class, all such employers shall be included in and assigned the taxable wage rate specified for such class, notwithstanding the provisions of paragraph (c) of this subsection.

(e) If the taxable payroll amount or the experience factor or both such taxable payroll amount and experience factor of any eligible or deficit employer listed on the schedules is changed, the employer shall be placed in that position on the schedules which he would have occupied had his taxable payroll amount and/or experience factor as changed been used in determining his position in the first instance, but such change shall not affect the position or rate classification of any other employer listed on the schedules and shall not affect the rate determination for previous years.

(2) For experience rating purposes, all previously accumulated benefit charges to covered employers' accounts, except cost reimbursement employers, shall not be changed except as provided in this chapter. Benefits paid prior to June 30 shall, as of June 30 of each year preceding the calendar year for which a covered employer's taxable wage rate is effective, be charged to the account of the covered employer, except cost reimbursement employers, who paid the largest individual amount of base period wages as shown on the determination used as the basis for the payment of such benefits, except that no charge shall be made to the account of such covered employer with respect to benefits paid under the following situations:

(a) If paid to a worker who terminated his services voluntarily without good cause attributable to such covered employer, or who had been discharged for misconduct in connection with such services;

(b) If paid in accordance with the provisions of section 72-1368(10), Idaho Code, and the decision to pay benefits is subsequently reversed;

(c) For that portion of benefits paid to multistate claimants pursuant to section 72-1344, Idaho Code, which exceeds the amount of benefits that would have been charged had only Idaho wages been used in paying the claim;

(d) If paid in accordance with the extended benefit program triggered by either national or state indicators;

(e) If paid to a worker who continues to perform services for such covered employer without a reduction in his customary work schedule, and who is

eligible to receive benefits due to layoff or a reduction in earnings from another employer;

(f) If paid to a worker who turns down an offer of suitable work because of participation in a job training program pursuant to the requirements of section 72-1366(8), Idaho Code.

(3) A covered employer whose experience rating account is chargeable, as prescribed by this section, is an interested party as defined in section 72-1323, Idaho Code. A determination of chargeability shall become final unless, within fourteen (14) days after notice as provided in section 72-1368(5), Idaho Code, an appeal is filed by an interested party with the department in accordance with the department's rules.

(4) An experience rating record shall be maintained for each covered employer. The record shall be credited with all contributions which the covered employer has paid for covered employment prior to the cut-off date, pursuant to the provisions of this and preceding acts, and which covered employment occurred prior to the computation date. The record shall also be charged with the amount of benefits paid which are chargeable to the covered employer's account as provided by the appropriate provisions of the employment security law and regulations thereunder in effect at the time such benefits were paid. Nothing in this section shall be construed to grant any covered employer or individual in his service a priority with respect to any claim or right because of amounts paid by such covered employer into the employment security fund.

(5)(a) Whenever any individual or type of organization, whether or not a covered employer within the meaning of section 72-1315, Idaho Code, in any manner succeeds to, or acquires all or substantially all, of the business of an employer who at the time of acquisition was a covered employer, and in respect to whom the director finds that the business of the predecessor is continued solely by the successor, the separate experience rating account of the predecessor shall, upon the joint application of the predecessor and the successor within the one hundred eighty (180) days after such acquisition and approval by the director, be transferred to the successor employer for the purpose of determining such successor's liability and taxable wage rate and any successor who was not an employer on the date of acquisition shall as of such date become a covered employer as defined in this chapter. Such one hundred eighty (180) day period may be extended at the discretion of the director.

(b) Whenever any individual or type of organization, whether or not a covered employer within the meaning of section 72-1315, Idaho Code, in any manner succeeds to, or acquires, part of the business of an employer who at the time of acquisition was a covered employer, and such portion of the business is continued by the successor, so much of the separate experience rating account of the predecessor as is attributable to the portion of the business transferred, as determined on a pro rata basis in the same ratio that the wages of covered employees properly allocable to the transferred portion of the business bears to the payroll of the predecessor in the last four (4) completed calendar quarters immediately preceding the date of transfer, shall, upon the joint application of the

predecessor and the successor within one hundred eighty (180) days after such acquisition and approval by the director, be transferred to the successor employer for the purpose of determining such successor's liability and taxable wage rate and any successor who was not an employer on the date of acquisition shall as of such date become a covered employer as defined in this chapter. Such one hundred eighty (180) day period may be extended at the discretion of the director.

(c)(i) If the successor was a covered employer prior to the date of the acquisition of all or a part of the predecessor's business his taxable wage rate, effective the first day of the calendar quarter immediately following the date of acquisition, shall be a newly computed rate based on the combined experience of the predecessor and successor, the resulting rate remaining in effect the balance of the rate year.

(ii) If the successor was not a covered employer prior to the date of the acquisition of all or a part of the predecessor's business, his rate shall be the rate applicable to the predecessor with respect to the period immediately preceding the date of acquisition, but if there were more than one (1) predecessor the successor's rate shall be a newly computed rate based on the combined experience of the predecessors, becoming effective immediately after the date of acquisition, and shall remain in effect the balance of the rate year.

(d) For purposes of this section, an employer's experience rating account shall consist of the actual contribution, benefit and taxable payroll experience of the employer and any amounts due from the employer under this chapter. When a transferred experience rating account includes amounts due from the employer under this chapter, both the predecessor employer and the successor employer shall be jointly and severally liable for those amounts.

History.

1947, ch. 269, § 51, p. 793; am. 1949, ch. 144, § 51, p. 252; am. 1951, ch. 236, § 6, p. 482; am. 1953, ch. 180, § 1, p. 272; am. 1955, ch. 18, § 6, p. 20; am. 1957, ch. 158, § 2, p. 274; am. 1963, ch. 314, § 7, p. 841; am. 1965, ch. 203, § 1, p. 456; am. 1967, ch. 117, § 8, p. 233; am. 1971, ch. 142, § 12, p. 595; am. 1975, ch. 126, § 6, p. 259; am. 1980, ch. 264, § 5, p. 682; am. 1986, ch. 24, § 2, p. 71; am. 1991, ch. 119, § 7, p. 248; am. 1998, ch. 1, § 67, p. 3; am. 2004, ch. 24, § 4, p. 32; am. 2005, ch. 5, § 9, p. 6; am. 2008, ch. 44, § 3, p. 110; am. 2010, ch. 183, § 2, p. 377; am. 2011, ch. 94, § 1, p. 202.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 44, in the section catchline, added "and voluntary transfers of experience rating accounts"; deleted the former last sentence in paragraph (5)(a), which read: "The transfer of the predecessor's experience rating account as of the last computation date to the successor shall be mandatory if the management or ownership or control is substantially the same for the successor as for the predecessor and there is a continuity of business activity by the successor"; and deleted the former last two sentences in paragraph (5)(b), which read: "The transfer of the predecessor's experience rating account as of the last computation date to the successor shall be mandatory if the management or ownership or control is substantially the same for the successor as for the predecessor and there is a continuity of business activity by the successor. Whenever such mandatory transfer involves only a portion of the experience rating record, and the predecessor or successor employers fail within ten

(10) days after notice to supply the required payroll information, the transfer shall be based on estimates of the allocable payrolls."

The 2010 amendment, by ch. 183, added paragraph (2)(f).

The 2011 amendment, by ch. 94, added paragraph (1)(a)(iv).

JUDICIAL DECISIONS

Transfer of Experience Rating.

Company and corporation had substantially the same management and control and there was a continuity of business activity, requiring a transfer of the company's experience rating account to the corporation. Super Grade, Inc. v. Idaho DOC, 144 Idaho 386, 162 P.3d 765 (2007).

72-1351A. Mandatory transfers of experience rating accounts and federal conformity provisions regarding transfers of experience and assignment of rates. — Notwithstanding any other provision of this chapter, the following shall apply regarding transfers of experience and assignment of rates:

(1)(a) If a covered employer transfers its trade or business, or a portion thereof, to another employer, whether or not a covered employer within the meaning of section 72-1315, Idaho Code, and, at the time of the transfer, there is substantially common ownership, management or control of the two (2) employers, then the experience rating account attributable to the transferred trade or business shall be transferred to the employer to whom such business is so transferred. The rates of both employers shall be recalculated using the methods provided in section 72-1351(5)(b) and either (c)(i) or (c)(ii), Idaho Code. Whenever such mandatory transfer involves only a portion of the experience rating record, and the predecessor or successor employers fail within ten (10) days after notice to supply the required payroll information, the transfer may be based on estimates of the allocable payrolls.

(b) If, following a transfer of experience under paragraph (a) of this subsection (1), the director determines that a substantial purpose of the transfer of the trade or business was to obtain a reduced liability for contributions, then the experience rating accounts of the employers involved shall be combined into a single account and a single rate shall be assigned to such account.

(2) Whenever a person who is not a covered employer under this chapter at the time such person acquires the trade or business of a covered employer, the experience rating account of the acquired business shall not be transferred to such person if the director finds that such person acquired the business primarily for the purpose of obtaining a lower rate of contributions. Instead, such person shall be assigned the standard rate for new employers under section 72-1350, Idaho Code. In determining whether the trade or business was acquired primarily for the purpose of obtaining a lower rate of contributions, the director shall use objective factors which may include, but are not limited to, the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(3)(a) It shall be a violation of this section if a person:

(i) Makes any false statement to the department when the maker knows the statement to be false or acts with deliberate ignorance of or reckless disregard for the truth of the matter or willfully fails to disclose a material fact to the department in connection with the transfer of a trade or business;

(ii) Prepares any false or antedated report, form, book, paper, record, written instrument, or other matter or thing in connection with the transfer of a trade or business with the intent to submit it or allow it to be submitted to the department as genuine or true;

(iii) Knowingly violates or attempts to violate subsection (1) or (2) of this section or any other provision of this chapter related to determining the assignment of a contribution rate or an experience rate; or

(iv) Knowingly advises another person in a way that results in a violation or an attempted violation of subsection (1) or (2) of this section or any other provision of this chapter related to determining the assignment of a contribution rate or an experience rate.

(b) If a person commits any of the acts described in paragraph (a) of this subsection (3), the person shall be subject to the following penalties:

(i) If the person is a covered employer, a civil money penalty of ten percent (10%) of such person's taxable wages for the four (4) completed consecutive quarters preceding the violation shall be imposed for such year and said penalty shall be deposited in the state employment security administrative and reimbursement fund as established by section 72-1348, Idaho Code.

(ii) If the person is not a covered employer, such person shall be subject to a civil money penalty of not more than five thousand dollars ($5,000) for each violation. Any such penalty shall be deposited in the state employment security administrative and reimbursement fund as established by section 72-1348, Idaho Code.

(4) Every person who knowingly makes any false statement to the department or knowingly fails to disclose a material fact to the department in connection with the transfer of a trade or business, or knowingly prepares any false or antedated report, form, book, paper, record, written instrument, or other matter or thing in connection with the transfer of a trade or business with the intent to submit it or allow it to be submitted to the department as genuine or true, or knowingly violates or attempts to violate subsection (1) or (2) of this section or any other provision of this chapter related to determining the assignment of a contribution rate or an experience rate, or knowingly advises another person to act in a way that results in a violation or an attempted violation of subsection (1) or (2) of this section or any other provision of this chapter related to determining the assignment of a contribution rate or an experience rate, shall be guilty of a felony punishable as provided in section 18-112, Idaho Code.

(5) For purposes of this section:

(a) An employer's experience rating account shall consist of the actual contribution, benefit and taxable payroll experience of the employer and any amounts due from the employer under this chapter. When a trans-

ferred experience rating account includes amounts due from the employer under this chapter, both the predecessor employer and the successor employer shall be jointly and severally liable for those amounts.

(b) "Knowingly" means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibition involved.

(c) "Person" has the meaning given such term by section 7701(a)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 7701(a)(1)).

(d) A "transfer of a trade or business" occurs whenever a person in any manner acquires or succeeds to all or a portion of a trade or business. Factors the department may consider when determining whether a transfer of a trade or business has occurred include, but are not limited to, the following:

(i) Whether the successor continued the business enterprise of the acquired business;

(ii) Whether the successor purchased, leased or assumed machinery and manufacturing equipment, office equipment, business premises, the business or corporate name, inventories, a covenant not to compete or a list of customers;

(iii) Continuity of business relationships with third parties such as vendors, suppliers and subcontractors;

(iv) A transfer of good will;

(v) A transfer of accounts receivable;

(vi) Possession and use of the predecessor's sales correspondence; and

(vii) Whether the employees remained the same.

(e) "Trade or business" includes, but is not limited to, the employer's workforce. The transfer of some or all of an employer's workforce to another employer shall be considered a transfer of a trade or business when, as the result of such transfer, the transferring employer no longer performs trade or business with respect to the transferred workforce, and such trade or business is performed by the employer to whom the workforce is transferred.

(f) "Violates or attempts to violate" includes, but is not limited to, intent to evade, misrepresentation or willful nondisclosure.

(6) The director shall establish procedures to identify the transfer or acquisition of a business for purposes of this section.

(7) This section shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulations issued by the United States department of labor.

History.

I.C., § 72-1351A, as added by 2005, ch. 12, § 1, p. 36; am. 2008, ch. 44, § 4, p. 113.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 44, in the section catchline, added "Mandatory transfers of experience rating accounts and"; in paragraph (1)(a), in the first sentence, substituted "another employer, whether or not a covered employer within the meaning of section 72-1315, Idaho Code" for "another covered employer," in the second sentence, inserted "either" and "or (c)(ii)," and added the last sentence; in the introductory paragraph in paragraph (5)(d), inserted "acquires or,"

and added the last sentence; and added paragraphs (5)(d)(i) through (5)(d)(vii).

72-1351B. Federal conformity provision prohibiting relief from liability. — (1) Notwithstanding any other provision of this chapter, an experience rated employer's account may not be relieved of charges and a reimbursing employer may not be relieved of liability for benefits paid to a claimant that are subsequently determined to be overpaid if:

(a) The covered employer or an agent of the covered employer is at fault for failing to respond timely or adequately to the department's written or electronic request for information relating to a claim for unemployment insurance benefits; and

(b) The covered employer or agent of the covered employer has established a pattern of failing to timely or adequately respond.

(2) A response is timely if the requested information is received by the department within seven (7) days from the date the request is mailed or sent electronically. This time limit may be extended by the department at its discretion upon a covered employer's or agent of the covered employer's written request.

(3) A response is adequate if it provides sufficient facts to allow the department to make the correct determination. A response will not be considered inadequate if the department failed to ask for all necessary information.

(4) A pattern of failure to respond timely or adequately means at least two (2) or more instances of such behavior. If a covered employer uses a third party agent to respond on its behalf, then a pattern may be established based upon that agent's behavior with respect to the individual client or covered employer that agent represents.

(5) A covered employer shall be notified in writing of the department's determination, which shall become final unless, within fourteen (14) days after notice as provided in section 72-1368(5), Idaho Code, an appeal is filed by an interested party with the department in accordance with the provisions of section 72-1361, Idaho Code.

History.
I.C., § 72-1351B, as added by 2013, ch. 103, § 1, p. 245.

STATUTORY NOTES

Effective Dates.
Section 4 of S.L. 2013, ch. 103 provided: "Sections 1 and 2 of this act shall be in force and effect on and after October 22, 2013, and Section 3 of this act shall be in full force and effect on and after July 1, 2013."

72-1352A. Corporate officers — Exemption from coverage — Notification — Reinstatement. — (1) A corporation that is a public company, other than those covered in sections 72-1316A, 72-1322D and 72-1349C, Idaho Code, may elect to exempt from coverage pursuant to this chapter any bona fide corporate officer who is voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or

bylaws of the corporation, is a shareholder of the corporation, exercises substantial control in the daily management of the corporation and whose primary responsibilities do not include the performance of manual labor.

(2) A corporation that is not a public company, other than those covered in sections 72-1316A, 72-1322D and 72-1349C, Idaho Code, may elect to exempt from coverage pursuant to this chapter any bona fide corporate officer, without regard to the corporate officer's performance of manual labor, if the corporate officer is a shareholder of the corporation, voluntarily agrees to be exempted from coverage and exercises substantial control in the daily management of the corporation.

(3) For purposes of this section, a "public company" is a corporation that has a class of shares registered with the federal securities and exchange commission pursuant to section 12 or 15 of the Securities and Exchange Act of 1934 or section 8 of the Investment Company Act of 1940, or any successor statute.

(4) To make the election, a corporation with qualifying corporate officers pursuant to subsection (1) or (2) of this section must register with the department each qualifying corporate officer it elects to exempt from coverage. The registration must be in a format prescribed by the department and be signed and dated by the corporate officer being exempted from coverage. Registration forms received and approved by the department on or before December 15 shall become effective the first day of the next calendar year and shall remain in effect for at least two (2) consecutive calendar years. Registration forms received and approved by the department after December 15, 2011, and on or before July 31, 2012, shall become effective January 1, 2012, and shall remain in effect for at least two (2) consecutive calendar years. Except for elections made after December 15, 2011, and on or before July 31, 2012, exemptions from coverage shall not be retroactive and the corporation requesting the exemption shall not be eligible for a refund or credit for contributions paid for corporate officers before the effective date of the exemption.

(5) A newly formed corporation with qualifying corporate officers pursuant to subsections (1) and (2) of this section shall register with the department each corporate officer it elects to exempt within forty-five (45) calendar days after submitting its Idaho business registration form to the department as required by section 72-1337, Idaho Code. The registration must be in a format prescribed by the department and be signed and dated by the corporate officer being exempted from coverage. Registration forms received and approved by the department shall become effective as of the date the Idaho business registration form was submitted to the department and shall remain in effect for at least two (2) consecutive calendar years.

(6) A corporation may elect to reinstate coverage for one (1) or more corporate officers previously exempted pursuant to this section. Reinstatement requires written notice from the corporation to the department in a format prescribed by the department. Reinstatement requests received by the department on or before December 15 shall become effective the first day of the calendar year following the end of the exemption's two (2) year effective date. Coverage shall not be reinstated retroactively.

History.
I.C., § 72-1352A, as added by 2011, ch. 82, § 2, p. 173; am. 2012, ch. 165, § 1, p. 446.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 165, added the third sentence and the exception at the beginning of the fourth sentence in subsection (4), added subsection (5), and renumbered former subsection (5) as subsection (6).

Federal References.
Sections 12 and 15 of the Securities and Exchange Act of 1934, referred to in subsection (3), are codified as 15 USCS §§ 78*l* and 78o.

Section 8 of the Investment Company Act of 1940, referred to in subsection (3), is codified as 15 USCS § 80a-8.

Effective Dates.
Section 2 of S.L. 2012, ch. 165 declared an emergency. Approved March 27, 2012.

72-1353. Administrative determinations of coverage.

JUDICIAL DECISIONS

Cited in: Giltner, Inc. v. Idaho Dep't of Commerce & Labor, 145 Idaho 415, 179 P.3d 1071 (2008).

72-1361. Appeals to the department and to the commission. — Upon appeal from a denial of a claim for refund or credit, determination of amounts due upon failure to report, determination of rate of contribution, determination of coverage, determination of chargeability, or jeopardy determination, the director may transfer the appeal directly to an appeals examiner pursuant to section 72-1368(6), Idaho Code, or he may issue a redetermination affirming, reversing or modifying the initial determination. A redetermination shall become final unless, within fourteen (14) days after notice as provided in section 72-1368(5), Idaho Code, an appeal is filed by an interested party with the department in accordance with the department's rules. Appeal procedures shall be governed by the provisions of section 72-1368(4), (6), (7), (8), (9) and (11), Idaho Code. The party appealing shall have the burden of proving each issue appealed by clear and convincing evidence. The provisions of the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, regarding contested cases and judicial review of contested cases are inapplicable to proceedings involving interested employers under this chapter.

History.
1947, ch. 269, § 61, p. 793; am. 1949, ch. 144, § 61, p. 252; am. 1961, ch. 294, § 2, p. 517; am. 1965, ch. 203, § 6, p. 456; am. 1989, ch. 57, § 6, p. 78; am. 1992, ch. 263, § 59, p. 783; am. 1998, ch. 1, § 79, p. 3; am. 2011, ch. 82, § 3, p. 173.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 82, substituted "72-1368(4), (6), (7), (8), (9) and (11), Idaho Code" for "72-1368(6), (7), (8), (9) and (11), Idaho Code" in the third sentence.

72-1362. Liability of successor.

JUDICIAL DECISIONS

Liens.

Successor corporation was not exempt from the Idaho department of labor and commerce's lien claims against equipment acquired from predecessor, as it had failed to conduct a reasonable diligent good faith lien search prior to purchase of the equipment. Super Grade, Inc. v. Idaho DOC, 144 Idaho 386, 162 P.3d 765 (2007).

72-1366. Personal eligibility conditions. — The personal eligibility conditions of a benefit claimant are that:

(1) The claimant shall have made a claim for benefits and provided all necessary information pertinent to eligibility.

(2) The claimant shall have registered for work and thereafter reported to a job service office or other agency in a manner prescribed by the director.

(3) The claimant shall have met the minimum wage requirements in his base period as provided in section 72-1367, Idaho Code.

(4)(a) During the whole of any week with respect to which he claims benefits or credit to his waiting period, the claimant was:

(i) Able to work, available for suitable work, and seeking work; provided, however, that no claimant shall be considered ineligible for failure to comply with the provisions of this subsection if:

1. Such failure is due to the claimant's illness or disability which occurs after he has filed a claim and during such illness or disability, the claimant does not refuse or miss suitable work that would have provided wages greater than one-half (1/2) of the claimant's weekly benefit amount; or

2. Such failure is due to compelling personal circumstances, provided that such failure does not exceed a minor portion of the claimant's workweek and during which time the claimant does not refuse or miss suitable work that would have provided wages greater than one-half (1/2) of the claimant's weekly benefit amount; and

(ii) Living in a state, territory, or country that is included in the interstate benefit payment plan or that is a party to an agreement with the United States or the director with respect to unemployment insurance.

(b) If a claimant who is enrolled in an approved job training course pursuant to subsection (8) of this section fails to attend or otherwise participate in the job training course during any week with respect to which he claims benefits or credit to his waiting period, the claimant shall be ineligible for that week if he was not able to work nor available for suitable work, to be determined as follows: The claimant shall be ineligible unless he is making satisfactory progress in the training and his failure to attend or otherwise participate was due to:

(i) The claimant's illness or disability which occurred after he had filed a claim and the claimant missed fewer than one-half (1/2) of the classes available to him that week; or

(ii) Compelling personal circumstances, provided that the claimant

missed fewer than one-half (1/2) of the classes available to him that week.

(c) A claimant shall not be denied regular unemployment benefits under any provision of this chapter relating to availability for work, active search for work or refusal to accept work, solely because the claimant is seeking only part-time work, if the department determines that a majority of the weeks of work in the claimant's base period were for less than full-time work. For the purpose of this subsection, "seeking only part-time work" is defined as seeking work that has comparable hours to the claimant's part-time work experience in the base period, except that a claimant must be available for at least twenty (20) hours of work per week.

(5) The claimant's unemployment is not due to the fact that he left his employment voluntarily without good cause connected with his employment, or that he was discharged for misconduct in connection with his employment.

(6) The claimant's unemployment is not due to his failure without good cause to apply for available suitable work or to accept suitable work when offered to him. The longer a claimant has been unemployed, the more willing he must be to seek other types of work and accept work at a lower rate of pay.

(7) In determining whether or not work is suitable for an individual, the degree of risk involved to his health, safety, morals, physical fitness, experience, training, past earnings, length of unemployment and prospects for obtaining local employment in his customary occupation, the distance of the work from his residence, and other pertinent factors shall be considered. No employment shall be deemed suitable and benefits shall not be denied to any otherwise eligible individual for refusing to accept new work or to hold himself available for work under any of the following conditions:

(a) If the vacancy of the position offered is due directly to a strike, lockout, or other labor dispute;

(b) If the wages, hours, or other conditions of the work offered are below those prevailing for similar work in the locality of the work offered;

(c) If, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(8) No claimant who is otherwise eligible shall be denied benefits for any week due to an inability to comply with the requirements contained in subsections (4)(a)(i) and (6) of this section, if:

(a) The claimant is a participant in a program sponsored by title I of the workforce investment act and attends a job training course under that program; or

(b) The claimant attends a job training course authorized pursuant to the provisions of section 236(a)(1) of the trade act of 1974 or the North American free trade agreement implementation act.

(c) The claimant lacks skills to compete in the labor market and attends a job training course with the approval of the director. The director may approve job training courses that meet the following criteria:

(i) The purpose of the job training is to teach the claimant skills that will enhance the claimant's opportunities for employment; and

(ii) The job training can be completed within two (2) years, except that this requirement may be waived pursuant to rules that the director may prescribe.

This subsection shall apply only if the claimant submits with each claim report a written certification from the training facility that the claimant is attending and satisfactorily completing the job training course. If the claimant fails to attend or otherwise participate in the job training course, it must be determined whether the claimant is able to work and available for suitable work as provided in subsection (4)(b) of this section.

(9) No claimant who is otherwise eligible shall be denied benefits under subsection (5) of this section for leaving employment to attend job training pursuant to subsection (8) of this section, provided that the claimant obtained the employment after enrollment in or during scheduled breaks in the job training course, or that the employment was not suitable. For purposes of this subsection, the term "suitable employment" means work of a substantially equal or higher skill level than the individual's past employment, and wages for such work are not less than eighty percent (80%) of the average weekly wage in the individual's past employment.

(10) A claimant shall not be eligible to receive benefits for any week with respect to which it is found that his unemployment is due to a labor dispute; provided, that this subsection shall not apply if it is shown that:

(a) The claimant is not participating, financing, aiding, abetting, or directly interested in the labor dispute; and

(b) The claimant does not belong to a grade or class of workers with members employed at the premises at which the labor dispute occurs, who are participating in or directly interested in the dispute.

(11) A claimant shall not be entitled to benefits for any week with respect to which or a part of which he has received or is seeking benefits under an unemployment insurance law of another state or of the United States; provided, that if the appropriate agency of such other state or of the United States shall finally determine that he is not entitled to such unemployment compensation or insurance benefits, he shall not by the provisions of this subsection be denied benefits. For purposes of this section, a law of the United States providing any payments of any type and in any amounts for periods of unemployment due to involuntary unemployment shall be considered an unemployment insurance law of the United States.

(12) A claimant shall not be entitled to benefits for a period of fifty-two (52) weeks if it is determined that he has willfully made a false statement or willfully failed to report a material fact in order to obtain benefits. The period of disqualification shall commence the week the determination is issued. The claimant shall also be ineligible for waiting week credit and shall repay any sums received for any week for which the claimant received waiting week credit or benefits as a result of having willfully made a false statement or willfully failed to report a material fact. The claimant shall also be ineligible for waiting week credit or benefits for any week in which he owes the department an overpayment, civil penalty, or interest resulting

from a determination that he willfully made a false statement or willfully failed to report a material fact.

(13) A claimant shall not be entitled to benefits if his principal occupation is self-employment.

(14) A claimant who has been found ineligible for benefits under the provisions of subsection (5), (6), (7) or (9) of this section shall reestablish his eligibility by having obtained bona fide work and received wages therefor in an amount of at least fourteen (14) times his weekly benefit amount.

(15) Benefits based on service in employment defined in sections 72-1349A and 72-1352(3), Idaho Code, shall be payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this act.

(a) If the services performed during one-half (1/2) or more of any contract period by an individual for an educational institution as defined in section 72-1322B, Idaho Code, are in an instructional, research, or principal administrative capacity, all the services shall be deemed to be in such capacity.

(b) If the services performed during less than one-half (1/2) of any contract period by an individual for an educational institution are in an instructional, research, or principal administrative capacity, none of the service shall be deemed to be in such capacity.

(c) As used in this section, "contract period" means the entire period for which the individual contracts to perform services, pursuant to the terms of the contract.

(16) No claimant is eligible to receive benefits in two (2) successive benefit years unless, after the beginning of the first benefit year during which he received benefits, he performed service and earned an amount equal to not less than six (6) times the weekly benefit amount established during the first benefit year.

(17)(a) Benefits based on wages earned for services performed in an instructional, research, or principal administrative capacity for an educational institution shall not be paid for any week of unemployment commencing during the period between two (2) successive academic years, or during a similar period between two (2) terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual who performs such services in the first academic year (or term) and has a contract to perform services in any such capacity for any educational institution in the second academic year or term, or has been given reasonable assurance that such a contract will be offered.

(b) Benefits based on wages earned for services performed in any other capacity for an educational institution shall not be paid to any individual for any week which commences during a period between two (2) successive school years or terms if the individual performs such services in the first school year or term, and there is a contract or reasonable assurance that the individual will perform such services in the second school year or term. If benefits are denied to any individual under this paragraph (b) and the individual was not offered an opportunity to perform such services for

the educational institution for the second academic year or term, the individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this clause.

(c) With respect to any services described in paragraphs (a) and (b) of this subsection (17), benefits shall not be paid nor "waiting week" credit given to an individual for wages earned for services for any week which commences during an established and customary vacation period or holiday recess if the individual performed the services in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance the individual will perform such services in the period immediately following such vacation period or holiday recess.

(d) With respect to any services described in paragraphs (a) and (b) of this subsection (17), benefits shall not be payable on the basis of services in any capacities specified in paragraphs (a), (b) and (c) of this subsection (17) to any individual who performed such services in an educational institution while in the employ of an educational service agency. For purposes of this paragraph the term "educational service agency" means a governmental entity which is established and operated exclusively for the purpose of providing such services to one (1) or more educational institutions.

(18) Benefits shall not be payable on the basis of services which substantially consist of participating in sports or athletic events or training or preparing to participate, for any week which commences during the period between two (2) successive sport seasons (or similar periods) if the individual performed services in the first season (or similar period) and there is a reasonable assurance that the individual will perform such services in the later of such season (or similar period).

(19)(a) Benefits shall not be payable on the basis of services performed by an alien unless the alien was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time the services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of sections 207 and 208 or section 212(d)(5) of the immigration and nationality act).

(b) Any data or information required of individuals applying for benefits to determine eligibility under this subsection shall be uniformly required from all applicants for benefits.

(c) A decision to deny benefits under this subsection must be based on a preponderance of the evidence.

(20) An individual who has been determined to be likely to exhaust regular benefits and to need reemployment services pursuant to a profiling system established by the director must participate in those reemployment services unless:

(a) The individual has completed such services; or

(b) There is justifiable cause, as determined by the director, for the claimant's failure to participate in such services.

(21)(a) A claimant:

(i) Who has been assigned to work for one (1) or more customers of a staffing service; and

(ii) Who, at the time of hire by the staffing service, signed a written notice informing him that completion or termination of an assignment for a customer would not, of itself, terminate the employment relationship with the staffing service;

will not be considered unemployed upon completion or termination of an assignment until such time as he contacts the staffing service to determine if further suitable work is available. If the claimant:

1. Contacts the staffing service and refuses a suitable work assignment that is offered to him at that time, he will be considered to have voluntarily quit that employment; or

2. Contacts the staffing service and the service does not have a suitable work assignment for him, he will be considered unemployed due to a lack of work; or

3. Accepts new employment without first contacting the staffing service for additional work, he will be considered to have voluntarily quit employment with the staffing service.

(b) For the purposes of this subsection, the term "staffing service" means any person who assigns individuals to work for its customers and includes, but is not limited to, professional employers, as defined in chapter 24, title 44, Idaho Code, and the employers of temporary employees as defined in section 44-2403(7), Idaho Code.

(22)(a) A claimant who is otherwise eligible for regular benefits as defined in section 72-1367A(1)(e), Idaho Code, shall be eligible for training extension benefits if the department determines that all of the following criteria are met:

(i) The claimant is unemployed;

(ii) The claimant has exhausted all rights to regular unemployment benefits as defined in section 72-1367A(1)(e), Idaho Code, and all rights to extended benefits as defined in section 72-1367A(1)(f), Idaho Code, and all rights to benefits under section 2002 ("increase in unemployment compensation benefits") of division B, title II, the assistance for unemployed workers and struggling families act, of the American recovery and reinvestment act of 2009, public law 111-5, as enacted on February 17, 2009;

(iii) The claimant is enrolled in a training program approved by the department or in a job training program authorized under the workforce investment act, as amended; except that the training program must prepare the claimant for entry into a high-demand occupation if the department determines that the claimant separated from a declining occupation or has been involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the claimant's place of employment. For the purposes of this subsection, a "declining occupation" is one where there is a lack of sufficient current demand in the claimant's labor market area for the occupational skills for which the claimant is qualified by training and experience or current

physical or mental capacity and the lack of employment opportunities is expected to continue for an extended period of time, or the claimant's occupation is one for which there is a seasonal variation in demand in the labor market and the claimant has no other skills for which there is current demand. For the purposes of this subsection, a "high-demand occupation" is an occupation in a labor market area where work opportunities are available and qualified applicants are lacking as determined by the use of available labor market information;

(iv) The claimant is making satisfactory progress to complete the training as determined by the department; and

(v) The claimant is not receiving similar stipends or other training allowances for non-training costs. For the purposes of this subsection, "similar stipend" means an amount provided under a program with similar aims, such as providing training to increase employability, and in approximately the same amounts.

(b) The weekly training extension benefit amount shall equal the claimant's weekly benefit amount for the most recent benefit year less any deductible income as determined by the provisions of this chapter. The total amount of training extension benefits payable to a claimant shall be equal to twenty-six (26) times the claimant's average weekly benefit amount for the most recent benefit year. A claimant who is receiving training extension benefits shall not be denied training extension benefits due to the application of subsections (4)(a)(i) and (6) of this section and an employer's account shall not be charged for training extension benefits paid to the claimant.

History.

1947, ch. 269, § 66, p. 793; am. 1949, ch. 144, § 66, p. 252; am. 1951, ch. 235, § 4, p. 472; am. 1955, ch. 18, § 9, p. 20; am. 1959, ch. 51, § 1, p. 107; am. 1961, ch. 294, § 3, p. 517; am. 1963, ch. 271, § 1, p. 691; am. 1965, ch. 170, § 5, p. 331; am. 1969, ch. 57, § 1, p. 197; am. 1971, ch. 341, § 1, p. 1328; am. 1972, ch. 344, § 4, p. 998; am. 1973, ch. 89, § 1, p. 146; am. 1974, ch. 102, § 1, p. 1204; am. 1975, ch. 47, § 1, p. 86; am. 1976, ch. 141, § 5, p. 517; am. 1977, ch. 179, § 16, p. 464; am. 1978, ch. 112, § 9, p. 232; am. 1979, ch. 110, § 2, p. 348; am. 1980, ch. 264, § 9, p. 682; am. 1982, ch. 295, § 1, p. 751; am. 1982, ch. 326, § 10, p. 807; am. 1983, ch. 146, § 6, p. 382; am. 1985, ch. 203, § 2, p. 506; am. 1986, ch. 22, § 1, p. 63; am. 1987, ch. 352, § 1, p. 780; am. 1989, ch. 57, § 8, p. 78; am. 1990, ch. 353, § 3, p. 946; am. 1992, ch. 192, § 1, p. 597; am. 1995, ch. 98, § 3, p. 289; am. 1997, ch. 271, § 2, p. 786; am. 1998, ch. 1, § 84, p. 3; am. 1999, ch. 53, § 1, p. 131; am. 2000, ch. 137, § 1, p. 359; am. 2005, ch. 5, § 13, p. 6; am. 2006, ch. 38, § 2, p. 105; am. 2008, ch. 99, § 2, p. 271; am. 2009, ch. 238, § 2, p. 733.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 99, made designation changes within paragraphs (4)(a) and (21)(a)(ii); added paragraph (4)(b); and in subsection (8), made an internal reference correction in the introductory paragraph, and in the last paragraph, deleted "or demonstrates good cause for failure to attend the job training" from the end of the first sentence and added the last sentence.

The 2009 amendment, by ch. 238, added subsections 4(c) and 22; and in subsection (8)(ii) substituted "two (2) years" for "one (1) year" following "completed within."

Effective Dates.

Section 3 of S.L. 2009, ch. 238 provided that the act should take effect on and after January 1, 2010.

JUDICIAL DECISIONS

ANALYSIS

Appeals.
Discharge for misconduct.
Due process notice.
Evidence.
Failure to report material fact.
False statement.
Good cause for quitting.
Misconduct.

Appeals.

Where supported by substantial and competent — although conflicting — evidence, the findings reached by the commission will be upheld regardless of whether an appellate court may have reached a different conclusion. Hopkins v. Pneumotech, Inc., 152 Idaho 611, 272 P.3d 1242 (2012).

Discharge for Misconduct.

Although the Idaho industrial commission's denial of unemployment benefits to a nurse who was discharged for misconduct was upheld because it was supported by substantial and competent evidence, her employer was not entitled to attorney's fees because the nurse's appeal was not pursued unreasonably. Gunter v. Magic Valley Reg'l Med. Ctr., 143 Idaho 63, 137 P.3d 450 (2006).

Employee was not eligible for unemployment benefits where the employee's termination was the result of misconduct; there was substantial evidence to support the conclusion that the employee's absence to renew a driver's license was an extended absence that required prior notification, rather than a short errand that required no notice. Adams v. Aspen Water, 150 Idaho 408, 247 P.3d 635 (2011).

Discharged employee was entitled to unemployment benefits. The employee, after resigning, had sent an email to sales contacts with the employee's personal contact information to avoid talking about her reasons for leaving until she had left the position. The employer failed to show that the employee was terminated for misconduct under this section. Fearn v. Steed, 151 Idaho 295, 255 P.3d 1181 (2011).

Due Process Notice.

Where the industrial commission of the State of Idaho determined that claimant willfully underreported her weekly income while receiving unemployment benefits, she failed to prove that the written notice of the hearing before the appeals examiner failed to give her due process notice of the issues. The written notice indicated that the hearing was to determine whether claimant willfully made a false statement or representation or willfully failed to report a material fact in order to obtain unemployment insurance benefits, according to subsection (12). Cox v. Hollow Leg Pub & Brewery, 144 Idaho 154, 158 P.3d 930 (2007).

Evidence.

Where employer presented evidence of employee being habitually tardy, missing work without excuse, and playing video games while at work, but employee denied misconduct and presented evidence that she had never received any written warning or suspension and, in fact, had received a raise during the disputed period, there was substantial and competent evidence to support the commission's decision to uphold the employee's award of unemployment benefits. Hopkins v. Pneumotech, Inc., 152 Idaho 611, 272 P.3d 1242 (2012).

Failure to Report Material Fact.

Where claimant failed to report the weekly earnings she received as a server at a brewery pub for eighteen weeks to the Idaho department of commerce and labor, the industrial commission's finding that she willfully underreported her income was supported by substantial evidence. Claimant was ineligible from receiving unemployment benefits for those eighteen weeks and for fifty-two weeks following that determination. Cox v. Hollow Leg Pub & Brewery, 144 Idaho 154, 158 P.3d 930 (2007).

Failure of claimant to report his part-time employment and the wages therefrom was material to a department decision, because his earnings were relevant to the determination of his right to, and the amount of, benefits that he was to receive. McNulty v. Sinclair Oil Corp., 152 Idaho 582, 272 P.3d 554 (2012).

It only takes one reporting violation for the department to determine that a claimant has willfully failed to disclose a material fact which can make that individual ineligible for unemployment benefits for the following fifty-two (52) week benefits period. McNulty v. Sinclair Oil Corp., 152 Idaho 582, 272 P.3d 554 (2012).

False Statement.

Substantial and competent evidence supported the finding that claimant willfully

made a false statement when applying for unemployment benefits. Claimant selected "lack of work/laid off" for the reason for separating from his employer when claimant knew or should have known "quit" was the correct response because he quit due to lack of work. Claimant's repeated references to quitting to agency employees did not cure his error. Current v. Haddons Fencing, 152 Idaho 10, 266 P.3d 485 (2011).

Good Cause for Quitting.

Employee who alleged that she quit her job for good cause due to hostile work environment and gender, age, and disability discrimination was not entitled to unemployment benefits because the record showed that she had never attempted to go beyond her immediate supervisors in order to resolve any of her concerns. Higgins v. Larry Miller Subaru-Mitsubishi, 145 Idaho 1, 175 P.3d 163 (2007).

Misconduct.

When an employee is discharged for misconduct, it must be shown to be work-related before unemployment benefits can be denied; work-relatedness is a factual determination and when a claimant's eligibility for unemployment benefits is challenged by the employer on the ground that the employment was terminated for misconduct, the employer must carry the burden of proving that the employee was in fact discharged for employment-related misconduct. Beaty v. City of Idaho Falls, 110 Idaho 891, 719 P.2d 1151 (1986); Chapman v. NYK Line North America, Inc., 147 Idaho 178, 207 P.3d 154 (2009).

Court refused to overturn determination of industrial commission that worker was not entitled to unemployment benefit because he was discharged for misconduct, where worker presented no new questions of law, but merely attempted to attack the credibility of witnesses against him. Huff v. Singleton, 143 Idaho 498, 148 P.3d 1244 (2006).

Where claimant secretly recorded a meeting with an investigator in violation of an agreement with the investigator and lied about whether she intentionally made the recording, the claimant was correctly dismissed from employment for misconduct and was ineligible for unemployment benefits. Chapman v. NYK Line N. Am., Inc., 147 Idaho 178, 207 P.3d 154 (2009).

Employment-related misconduct, as used in subsection (5), includes any of the following: (1) a willful, intentional disregard of the employer's interest; (2) a deliberate violation of the employer's reasonable rules; or (3) a disregard of a standard of behavior which the employer has a right to expect of his employees. Mussman v. Kootenai County, 150 Idaho 68, 244 P.3d 212 (2010).

The burden of proving misconduct by a preponderance of the evidence falls strictly on the employer, and, where the burden is not met, benefits must be awarded to the claimant. Mussman v. Kootenai County, 150 Idaho 68, 244 P.3d 212 (2010).

Whether an employee's behavior constitutes "misconduct" is a factual determination that will be upheld on appeal unless not supported by substantial and competent evidence. Mussman v. Kootenai County, 150 Idaho 68, 244 P.3d 212 (2010).

Misconduct under a standard of behavior test requires the employer to prove, by a preponderance of the evidence, that (1) the employee's conduct fell below the standard of behavior expected by the employer; and (2) the employer's expectations were objectively reasonable under the circumstances. The first prong of the test speaks only to what the employer subjectively expected from the employee, while the second prong considers whether the employer's expectations are reasonable. In order for an employer's expectation to be objectively reasonable, the expectation must be communicated to the employee, unless the expectation is the type that flows naturally from the employment relationship. Mussman v. Kootenai County, 150 Idaho 68, 244 P.3d 212 (2010).

Employee was properly denied unemployment benefits under subsection (5), because substantial evidence supported the conclusion that she was terminated for insubordination, when she failed to provide a medical release that the employer requested in order to determine the types of work she was able to perform after her hysterectomy. Locker v. How Soel, Inc., 151 Idaho 696, 263 P.3d 750 (2011).

Employee was properly denied unemployment benefits because the employer met its burden of showing that the employee had been discharged for misconduct under subsection (5) for using foul language in the presence of management and other employees. Rigoli v. Wal-Mart Assocs., 151 Idaho 707, 263 P.3d 761 (2011).

Industrial commission erred in awarding unemployment benefits to an employee who was terminated; the employee's refusal to disclose to the employer the source of a rumor regarding the closing of one of the employer's facilities constituted misconduct. Stark v. Assisted Living Concepts, Inc., 152 Idaho 506, 272 P.3d 478 (2012).

There is no requirement that employee misconduct cause an employer harm, whether direct or indirect, in order for it to constitute misconduct under this section. Stark v. Assisted Living Concepts, Inc., 152 Idaho 506, 272 P.3d 478 (2012).

Idaho Industrial Commission's finding of misconduct this section was supported by substantial and competent evidence. It showed that the professor's behavior clearly

fell below the standard expected by the university, as it was undisputed that after several warnings, the professor continued to air his concerns and make accusations in mass e-mails and meetings. The university's standards were objectively reasonable because the university communicated its expectations to the professor but he failed to raise his concerns through the proper channels and his conduct was not a single instance of complaint but rather was a pattern of potentially slanderous public accusations. Sadid v. Idaho State Univ., 154 Idaho 88, 294 P.3d 1100 (2013).

Cited in: Henderson v. Eclipse Traffic Control & Flagging, Inc., 147 Idaho 628, 213 P.3d 718 (2009).

RESEARCH REFERENCES

A.L.R. — Conduct or activities of employees during off-duty hours as misconduct barring unemployment compensation benefits. 18 A.L.R.6th 195.

Eligibility for unemployment compensation as affected by voluntary resignation because of change of location of residence under statute conditioning benefits upon leaving for "good cause," "just cause," or cause of "necessitous and compelling nature.". 25 A.L.R.6th 101.

Eligibility for compensation as affected by voluntary resignation because of change of location of residence under statute conditioning benefits upon leaving for "good cause attributable to the employer". 26 A.L.R.6th 111.

Eligibility for unemployment compensation as affected by voluntary resignation because of change of location of residence under statute denying benefits to certain claimants based on particular disqualifying motive for move or unavailability for. 27 A.L.R.6th 123.

Unemployment compensation as affected by employer's relocation or transfer of employee from place of employment. 80 A.L.R.6th 635.

72-1367. Benefit formula. — (1) To be eligible an individual shall have the minimum qualifying amount of wages in covered employment in at least one (1) calendar quarter of his base period, and shall have total base period wages of at least one and one-quarter (1 1/4) times his high quarter wages. The minimum qualifying amount of wages shall be determined each January 1 and shall equal fifty percent (50%) of the product of the state minimum wage, as defined by section 44-1502, Idaho Code, multiplied by five hundred twenty (520) hours, rounded to the lowest multiple of twenty-six (26).

(2) The weekly benefit amount shall be one twenty-sixth (1/26) of highest quarter wages except that it shall not exceed the applicable maximum weekly benefit amount. The maximum weekly benefit amount shall be established as follows:

(a) For calendar year 2006 and the calendar years thereafter, prior to December 31 of each year, the director shall determine the state average weekly wage paid by covered employers for the preceding calendar year and the maximum weekly benefit amount to be effective for new claims filed in the first full week of the following January and filed thereafter until a new maximum weekly benefit amount becomes effective under this subsection (2). The maximum weekly benefit amount shall be determined based on the following table, using a percentage of the state average weekly wage paid by covered employers for the preceding calendar year and the base tax rate that has been calculated for the following calendar year pursuant to section 72-1350, Idaho Code:

Maximum WBA Index

Base Tax Rate At Least	Less Than	Average Weekly Wage Percentage
0.630%	0.840%	60%
0.840%	1.155%	59%
1.155%	1.470%	58%
1.470%	1.785%	57%
1.785%	2.100%	56%
2.100%	2.415%	55%
2.415%	2.730%	54%
2.730%	3.045%	53%
3.045%	3.360%	52%

(b) Effective for new claims filed in the first full week of July 2005, and filed thereafter until the first full week of the following January, the maximum weekly benefit amount shall be fifty-seven percent (57%) of the state average weekly wage paid by covered employers for the preceding calendar year. Prior to December 31, 2005, the director shall determine, by using the table provided in subsection (2)(a) of this section, the maximum weekly benefit amount to be effective for new claims filed in the first full week of the following January and filed thereafter until a new maximum weekly benefit amount becomes effective under subsection (2)(a) of this section.

(3) Any eligible individual shall be entitled during any benefit year to a total amount of benefits equal to his weekly benefit amount times the number of full weeks of benefit entitlement appearing in the following table based on his ratio of total base period earnings to highest quarter base period earnings.

Ratio of Total Base Period Earnings to Highest Quarter Earnings		Full Weeks of Benefit Entitlement
At Least	Up To	
1.25	1.60	10
1.6001	1.80	11
1.8001	1.92	12
1.9201	2.01	13
2.0101	2.08	14
2.0801	2.14	15
2.1401	2.21	16
2.2101	2.29	17
2.2901	2.38	18
2.3801	2.49	19
2.4901	2.61	20
2.6101	2.75	21
2.7501	2.91	22
2.9101	3.10	23
3.1001	3.32	24
3.3201	3.56	25
3.5601	4.00	26

(4) If the total wages payable to an individual for less than full-time work performed in a week claimed exceed one-half (1/2) of his weekly benefit amount, the amount of wages that exceed one-half (1/2) of the weekly benefit amount shall be deducted from the benefits payable to the claimant. For purposes of this subsection, severance pay shall be deemed wages, even if the claimant was required to sign a release of claims as a condition of receiving the pay from the employer. "Severance pay" means a payment or payments made to a claimant by an employer as a result of the severance of the employment relationship.

(5) Benefits payable to an individual shall be rounded to the next lower full dollar amount.

History.

1947, ch. 269, § 67, p. 793; am. 1949, ch. 144, § 67, p. 252; am. 1951, ch. 236, § 7, p. 482; am. 1955, ch. 18, § 10, p. 20; am. 1957, ch. 53, § 1, p. 90; am. 1961, ch. 298, § 4, p. 539; am. 1967, ch. 117, § 10, p. 233; am. 1970, ch. 83, § 1, p. 201; am. 1971, ch. 341, § 2, p. 1328; am. 1973, ch. 114, § 1, p. 206; am. 1980, ch. 256, § 3, p. 667; am. 1980, ch. 264, § 10, p. 682; am. 1983, ch. 146, § 7, p. 382; am. 1987, ch. 317, § 2, p. 666; am. 1997, ch. 271, § 3, p. 786; am. 1998, ch. 1, § 85, p. 3; am. 2005, ch. 5, § 14, p. 6; am. 2011, ch. 113, § 1, p. 311.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 113, rewrote the table in subsection (3), reducing the number of weeks that seasonal workers will be eligible to receive benefits.

72-1367A. Extended benefits. — The extended benefits program shall be administered pursuant to the provisions of this section.

(1) Definitions. As used in this section, unless the context clearly requires otherwise:

(a) "Extended benefit period" means a period which:

(i) Begins with the third week after a week for which there is a state "on" indicator; and

(ii) Ends with either of the following weeks, whichever occurs later:

1. The third week after the first week for which there is a state "off" indicator; or

2. The thirteenth consecutive week of such period;

provided, that no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.

(b)(i) There is a state "on" indicator for any week if the director determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (not seasonally adjusted):

1. Equaled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding thirteen (13) week period ending in each of the preceding two (2) calendar years and equaled or exceeded five percent (5%); or

2. Equaled or exceeded six percent (6%).

(ii) With respect to weeks of unemployment beginning on or after

February 1, 2009, and ending four (4) weeks prior to the last week for which federal sharing is authorized by section 2005(a) ("full federal funding of extended unemployment compensation for a limited period") of division B, title II, the assistance for unemployed workers and struggling families act, of the American recovery and reinvestment act of 2009, P.L. 111-5, as amended, there is a state "on" indicator for any week if the director determines, in accordance with the regulations of the United States secretary of labor that:

1. The average rate of seasonally adjusted total unemployment, as determined by the United States secretary of labor, for the period consisting of the most recent three (3) months for which data for all states are published before the close of such week equals or exceeds six and five-tenths percent (6.5%); and

2. The average rate of seasonally adjusted total unemployment in the state, as determined by the United States secretary of labor, for the three (3) month period referred to in subsection (1)(b)(ii)1. equals or exceeds one hundred ten percent (110%) of such average for either or both of the corresponding three (3) month periods ending in the two (2) preceding calendar years.

3. With respect to weeks of unemployment beginning on or after January 1, 2011, and ending on December 31, 2011, or the expiration date in section 502 of the tax relief, unemployment insurance reauthorization and job creation act of 2010, P.L. 111-312, as amended, whichever is later, the average rate of seasonally adjusted total unemployment in the state, as determined by the United States secretary of labor, for the three (3) month period referred to in subsection (1)(b)(ii)1. equals or exceeds one hundred ten percent (110%) of such average for any and all of the corresponding three (3) month periods ending in the three (3) preceding calendar years.

(c) There is a state "off" indicator for any week if the director determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks:

(i) The rate of insured unemployment (not seasonally adjusted) was less than six percent (6%) and was less than one hundred twenty percent (120%) of the average of such rates for the corresponding thirteen (13) week period ending in each of the preceding two (2) calendar years; or

(ii) The rate of insured unemployment (not seasonally adjusted) was less than five percent (5%); or

(iii) The option specified in subsection (1)(b)(ii) does not result in an "on" indicator.

(d) "Rate of insured unemployment," for purposes of paragraphs (b) and (c) of this subsection, means the percentage derived by dividing:

(i) The average weekly number of individuals filing claims for regular compensation in this state for weeks of unemployment for the most recent thirteen (13) consecutive week period, as determined by the director on the basis of his reports to the United States secretary of labor; by

(ii) The average monthly employment covered under this chapter for the first four (4) of the most recent six (6) completed calendar quarters ending before the end of such thirteen (13) week period.

(e) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits.

(f) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) payable to an individual under the provisions of this section for weeks of unemployment in his eligibility period.

(g) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period. Eligibility period of an individual also means the period consisting of weeks which begin in his extended benefit period, without regard to his benefit year end date, if the individual qualifies for one hundred percent (100%) federally financed federal-state extended benefits and the one hundred percent (100%) federally financed federal-state extended benefit payment period began on or before the individual exhausted his rights to benefits under the federal emergency unemployment compensation program of 2008.

(h) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(i) Has received, prior to such week, all of the regular benefits that were available to him under this chapter or any regular or extended benefits available to him under any other state law (including benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in his current benefit year that includes such week; provided that for the purposes of this subparagraph, an individual shall be deemed to have received all of the regular benefits that were available to him although as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits; or

(ii) His benefit year having expired prior to such week, has no or insufficient wages on the basis of which he could establish a new benefit year that would include such week; and

(iii) Has no right to unemployment benefits or allowances under the railroad unemployment insurance act and such other federal laws as are specified in regulations issued by the United States secretary of labor; and has not received and is not seeking unemployment benefits under the unemployment insurance law of Canada; but if he is seeking such benefits and the appropriate agency determines that he is not entitled to benefits under such law he is considered an exhaustee.

(i) "State law" means the unemployment insurance law of any state approved by the United States secretary of labor under section 3304 of the Internal Revenue Code of 1954.

(j) For purposes of this section only, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities; except that, if the individual furnishes evidence satisfactory to the department that such individual's prospects for obtaining work in his customary occupation within a reasonably short period are good, the determination of whether any work is suitable work with respect to such individual shall be made in accordance with applicable state law.

(2) Effect of state law provisions relating to regular benefits on claims for, and the payment of, extended benefits. Except when the result would be inconsistent with the other provisions of this section, the provisions of this chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

(3) Eligibility requirements for extended benefits. An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the director finds that with respect to such week:

(a) The claimant is an "exhaustee" as defined in subsection (1)(h) of this section;

(b) The claimant has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits;

(c) The claimant has had twenty (20) weeks of full-time employment for covered employers during his base period, or earned wages for services performed for covered employers during his base period equal to at least one and one-half (1 1/2) times his high quarter wages, or has earned wages for services performed for covered employers during his base period equal to at least forty (40) times his most recent weekly benefit amount.

(d)(i) Notwithstanding the provisions of this section, payment of extended benefits under this chapter shall not be made to any individual for any week of unemployment in his eligibility period:

1. During which he fails to accept any offer of suitable work, as defined in subsection (1)(j) of this section, or fails to apply for any suitable work to which he was referred; or

2. During which he fails to actively engage in seeking work.

(ii) If any individual is ineligible for extended benefits for any week by reason of a failure described in subsection (3)(d)(i)1. or (3)(d)(i)2. of this section, the individual shall be ineligible to receive extended benefits for any week which begins during a period which:

1. Begins with the week following the week in which such failure occurs; and

2. Does not end until such individual has been employed during at least four (4) weeks which begin after such failure and the total of the remuneration earned by the individual for being so employed is not less than the product of four (4) multiplied by the individual's average weekly benefit amount.

(iii) Extended benefits shall not be denied under subsection (3)(d)(i)1. of this section to any individual for any week by reason of a failure to accept an offer of, or apply for, suitable work:

1. If the gross average weekly remuneration payable to such individual for the position does not exceed the sum of:

(A) The individual's average weekly benefit amount, as determined for purposes of subsection (b)(1)(C) of section 202 of the federal-state extended unemployment compensation act of 1970, for his benefit year; plus

(B) The amount, if any, of supplemental unemployment compensation benefits, as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1954, payable to such individual for such week.

2. If the position was not offered to such individual in writing or was not listed with the department;

3. If such failure would not result in a denial of benefits under the provisions of this chapter to the extent that such provisions are not inconsistent with the provisions of subsections (1)(j) and (3)(d)(iv) of this section; or

4. If the position pays wages less than the higher of:

(A) The minimum wage provided by section 6(a)(1) of the fair labor standards act of 1938, without regard to any exemption; or

(B) Any applicable state or local minimum wage.

(iv) For purposes of this paragraph, an individual shall be treated as actively engaged in seeking work during any week if:

1. The individual has engaged in a systematic and sustained effort to obtain work during such week; and

2. The individual provides tangible evidence to the department that he has engaged in such an effort during such week.

(v) For purposes of this section only, the department shall refer applicants for extended benefits to any suitable work to which paragraphs 1., 2., 3. and 4. of subsection (3)(d)(iii) of this section would not apply.

(4)(a) Except as provided in paragraph (b) of this subsection, payment of extended benefits shall not be made to any individual for any week if:

(i) Extended benefits would, but for this subsection have been payable for such week pursuant to an interstate claim filed in any state under the interstate benefit payment plan; and

(ii) An extended benefit period is not in effect for such week in such state.

(b) Paragraph (a) of this subsection shall not apply with respect to the first two (2) weeks for which extended benefits are payable, determined without regard to this subsection, pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended benefits account established for the benefit year.

(c) Section 3304(a)(9)(A) of the Internal Revenue Code of 1954 shall not apply to any denial of benefits required under this subsection.

(5) Weekly extended benefit amount. The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year.

(6)(a) Total extended benefit amount. The total extended benefit amount

payable to an eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

(i) Fifty percent (50%) of the total amount of regular benefits which were payable to him under this chapter in his applicable benefit year;

(ii) Thirteen (13) times his weekly benefit amount which was payable to him under this chapter for a week of total unemployment in the applicable benefit year;

(iii) Provided that the amount so determined shall be reduced by the total amount of extended benefits paid, or being paid, to the individual for weeks of extended unemployment in the individual's benefit year which began prior to the effective date of the federal-state extended benefit period which is current in the week for which the individual first claims such benefits.

(iv) Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for the provisions of this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced, but not below zero (0), by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

(b)(i) Effective with respect to weeks beginning in a high unemployment period, subsection (6)(a) of this section shall be applied by substituting:

1. "Eighty percent (80%)" for "fifty percent (50%)" in subsection (6)(a)(i) of this section; and

2. "Twenty (20)" for "thirteen (13)" in subsection (6)(a)(ii) of this section.

(ii) For purposes of subsection (6)(b)(i) of this section, the term "high unemployment period" means any period during which an extended benefit period would be in effect if subsection (1)(b)(ii) were applied by substituting "eight percent (8%)" in subsection (1)(b)(ii)1. for "six and five-tenths percent (6.5%)."

(7)(a) Beginning and termination of extended benefit period. Whenever an extended benefit period is to become effective in this state as a result of a state "on" indicator, or an extended benefit period is to be terminated in this state as a result of a state "off" indicator, the director shall make a public announcement.

(b) Computations required by the provisions of subsection (1)(d) of this section shall be made by the director, in accordance with regulations prescribed by the United States secretary of labor.

(8) Notwithstanding any other provisions of this chapter, none of the benefits paid pursuant to the provisions of this section shall be charged to an employer's account for purposes of experience rating.

(9) Whenever a program of unemployment benefits becomes available that is financed entirely by the federal government, and such program will not allow payments to individuals who are entitled to extended benefits

pursuant to this section, the governor may, by executive order, trigger off an extended benefit period as defined in subsection (1)(a) of this section in order to provide payment of such federal benefits to individuals who have exhausted their right to regular benefits. When the federal benefits are exhausted, or if the director determines that payment of extended benefits would be more economically advantageous to the state of Idaho, the governor shall, by executive order, trigger extended benefits on if the criteria of subsection (1)(b) of this section are otherwise met.

(10) Until conformity with the federal-state extended unemployment compensation act of 1970 requires otherwise, the eligibility requirements in subsections (1)(j) and (3)(d) of this section are suspended. Except where inconsistent with the provisions of this section, the eligibility requirements of section 72-1366, Idaho Code, applicable to claims for regular benefits shall apply in lieu of the suspended provisions.

History.

I.C., § 72-1367A, as added by 1971, ch. 4, § 2, p. 6; am. 1975, ch. 127, § 1, p. 275; am. 1977, ch. 179, § 17, p. 464; am. 1978, ch. 112, § 11, p. 232; am. 1981, ch. 168, § 1, p. 294; am. 1982, ch. 326, § 11, p. 807; am. 1992, ch. 12, § 1, p. 26; am. 1993, ch. 10, § 2, p. 30; am. 1993, ch. 20, § 1, p. 73; am. 1998, ch. 1, § 86, p. 3; am. 2009, ch. 300, § 1, p. 891; am. 2011, ch. 112, § 1, p. 306.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 300, added subsection (1)(b)(ii) and made related redesignations; added subsection (1)(c)(iii); added the last sentence in subsection (1)(g); and added subsection (6)(b) and made related redesignations.

The 2011 amendment, by ch. 112, added paragraph (1)(b)(ii)3.

Federal References.

Section 2005(a) of public law 111-5, referred to in paragraph (1)(b)(ii), appears in a note following 26 U.S.C.S. § 3304.

The federal emergency unemployment compensation program of 2008, referred to in paragraph (1)(g), is set out in a note following 26 U.S.C.S. § 3304.

The railroad unemployment insurance act, referred to in subdivision (1)(h)(iii) of this section, is compiled as 45 U.S.C.S. §§ 351 to 368.

Section 3304 of the Internal Revenue Code of 1954 referred to in subdivision (1)(i) of this section, is compiled as 26 U.S.C.S. § 3304.

Section 202 of the federal-state extended unemployment compensation act of 1970, referred to in subdivision (3)(d)(iii)1.(A) of this section, is compiled as 26 U.S.C.S. § 3304.

Section 501(c)(17)(D) of the Internal Revenue Code of 1954, referred to in subdivision (3)(d)(iii)1.(B) of this section, is compiled as 26 U.S.C.S. § 501(c)(17)(D).

Section 6(a)(1) of the fair labor standards act of 1938, referred to in subdivision (3)(d)(iii)4.(A) of this section, is compiled as 29 U.S.C.S. § 206.

Section 3304(a)(9)(A) of the Internal Revenue Code of 1954, referred to in subdivision (4)(c) of this section is compiled as 26 U.S.C.S. § 3304(a)(9)(A).

Effective Dates.

Section 2 of S.L. 2009, ch. 300 declared an emergency. Approved May 7, 2009.

Section 2 of S.L. 2011, ch. 112 declared an emergency retroactively to January 1, 2011. Approved March 22, 2011.

72-1368. Claims for benefits — Appellate procedure — Limitation of actions. — (1) Claims for benefits shall be made in accordance with such rules as the director may prescribe.

(2) Each employer shall post and maintain in places readily accessible to individuals performing services for him printed statements concerning benefit rights under this chapter which shall be provided by the department without cost to the employer.

(3)(a) Following the filing of a claim pursuant to subsection (1) of this section the department shall:

(i) Verify the claimant's monetary eligibility pursuant to the requirements of section 72-1367, Idaho Code, and issue a determination. If monetarily eligible, the department shall establish the date the claimant's benefit year begins, the weekly benefit amount, the total benefit amount, the base period wages, and the base period covered employers.

(ii) If a claimant is monetarily eligible, the department shall verify, based on information provided by the claimant, whether the week claimed is a compensable week as defined in section 72-1312, Idaho Code. To receive benefits, a claimant must certify that each week claimed is a compensable week. In the event the week claimed is not a compensable week, the department shall issue a determination denying benefits and shall include the reasons for the ineligibility.

(b) If the department has reason to believe at any time within five (5) years from the week ending date for any week in which benefits were paid that a claimant was not eligible for benefits, the department may investigate the claim and on the basis of facts found issue a determination denying or allowing benefits for the week(s) in question. If the department determines a claimant was not entitled to benefits received, the department shall issue a determination requiring repayment of the overpaid benefits, and assess any applicable penalties and interest.

(c) Before a determination provided for in subsection (3) of this section becomes final or an appeal is filed, the department, on its own motion, may issue a revised determination. The determination or revised determination shall become final unless, within fourteen (14) days after notice, as provided in subsection (5) of this section, an appeal is filed by an interested party with the department.

(4)(a) Upon appeal of a determination or revised determination, the director shall transfer the appeal directly to an appeals examiner pursuant to subsection (6) of this section, unless the director finds, in his sole discretion, that a redetermination should be issued affirming, reversing or modifying the determination or revised determination. The redetermination shall become final unless, within fourteen (14) days after notice as provided in subsection (5) of this section, an appeal is filed by an interested party with the department in accordance with the department's rules.

(b) The director may, in his sole discretion, make a special redetermination whenever he finds that a departmental error has occurred in connection with a determination, revised determination or redetermination that has become final, or that additional wages of the claimant or other facts pertinent to such final determination, revised determination or redetermination have become available or have been newly discovered, or that benefits have been allowed or denied or the amount of benefits fixed on the basis of nondisclosure or misrepresentation of fact. The special redetermination must be made within one (1) year from the date the determination, revised determination or redetermination became final, except that a special redetermination involving a finding that benefits

have been allowed or denied or the amount of benefits fixed on the basis of nondisclosures or misrepresentations of fact may be made within two (2) years from the date the determination, revised determination or redetermination became final.

(5) All interested parties shall be entitled to prompt service of notice of determinations, revised determinations, redeterminations, special redeterminations and decisions. A notice shall be deemed served if delivered to the person being served, if mailed to his last known address or if electronically transmitted to him at his request and with the department's approval. Service by mail shall be deemed complete on the date of mailing. Service by electronic transmission shall be deemed complete on the date notice is electronically transmitted.

(6) To hear and decide appeals from determinations, revised determinations, redeterminations, and special redeterminations, the director shall appoint appeals examiners. Unless the appeal is withdrawn, the appeals examiner shall affirm, modify, set aside or reverse the determination, revised determination, redetermination, or special redetermination involved, after affording the interested parties reasonable opportunity for a fair hearing, or may refer a matter back to the department for further action. The appeals examiner shall notify the interested parties of his decision by serving notice in the same manner as provided in subsection (5) of this section. The decision shall set forth findings of fact and conclusions of law. The appeals examiner may, either upon application for rehearing by an interested party or on his own motion, rehear, affirm, modify, set aside or reverse any prior decision on the basis of the evidence previously submitted or on the basis of additional evidence; provided, that such application or motion be made within ten (10) days after the date of service of the decision. A complete record shall be kept of all proceedings in connection with an appealed claim. All testimony at any hearing shall be recorded. If a claim for review of the appeals examiner's decision is filed with the commission, the testimony shall be transcribed if ordered by the commission. Witnesses subpoenaed by the appeals examiner shall be allowed fees at a rate prescribed by the director. If any interested party to a hearing formally requests the appeals examiner to issue a subpoena for a witness whose evidence is deemed necessary, the appeals examiner shall promptly issue the subpoena, unless such request is determined to be unreasonable. Unless an interested party shall within fourteen (14) days after service of the decision of the appeals examiner file with the commission a claim for review or unless an application or motion is made for a rehearing of such decision, the decision of the appeals examiner shall become final.

(7) The commission shall decide all claims for review filed by any interested party in accordance with its own rules of procedure not in conflict herewith. The record before the commission shall consist of the record of proceedings before the appeals examiner, unless it appears to the commission that the interests of justice require that the interested parties be permitted to present additional evidence. In that event, the commission may, in its sole discretion, conduct a hearing or may remand the matter back to the appeals examiner for an additional hearing and decision. On the basis

of the record of proceedings before the appeals examiner as well as additional evidence, if allowed, the commission shall affirm, reverse, modify, set aside or revise the decision of the appeals examiner or may refer the matter back to the appeals examiner for further proceedings. The commission shall file its decision and shall promptly serve notice of its decision to all interested parties. A decision of the commission shall be final and conclusive as to all matters adjudicated by the commission upon filing the decision in the office of the commission; provided, within twenty (20) days from the date of filing the decision, any party may move for reconsideration of the decision or the commission may rehear or reconsider its decision on its own initiative. The decision shall be final upon denial of a motion for rehearing or reconsideration or the filing of the decision on reconsideration.

(8) No person acting on behalf of the director or any member of the commission shall participate in any case in which he has a direct or indirect personal interest.

(9) An appeal may be made to the Supreme Court from decisions and orders of the commission within the times and in the manner prescribed by rule of the Supreme Court.

(10)(a) Benefits shall be paid promptly in accordance with any decision allowing benefits, regardless of:

(i) The pendency of a time period for filing an appeal or petitioning for commission review; or

(ii) The pendency of an appeal or petition for review.

(b) Such payments shall not be withheld until a subsequent appeals examiner decision or commission decision modifies or reverses the previous decision, in which event benefits shall be paid or denied in accordance with such decision.

(11)(a) Any right, fact, or matter in issue, directly based upon or necessarily involved in a determination, redetermination, decision of the appeals examiner or decision of the commission which has become final, shall be conclusive for all the purposes of this chapter as between the interested parties who had notice of such determination, redetermination or decision. Subject to appeal proceedings and judicial review by the Supreme Court as set forth in this section, any determination, redetermination or decision as to rights to benefits shall be conclusive for all purposes of this chapter and shall not be subject to collateral attack irrespective of notice.

(b) No finding of fact or conclusion of law contained in a decision or determination rendered pursuant to this chapter by an appeals examiner, the industrial commission, a court, or any other person authorized to make such determinations shall have preclusive effect in any other action or proceeding, except proceedings that are brought (i) pursuant to this chapter, (ii) to collect unemployment insurance contributions, (iii) to recover overpayments of unemployment insurance benefits, or (iv) to challenge the constitutionality of provisions of this chapter or administrative proceedings under this chapter.

(12) The provisions of the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, regarding contested cases and judicial review of

contested cases are inapplicable to proceedings involving claimants under the provisions of this chapter.

History.

1947, ch. 269, § 68, p. 793; am. 1949, ch. 144, § 68, p. 252; am. 1951, ch. 104, § 15, p. 233; am. 1965, ch. 203, § 7, p. 456; am. 1972, ch. 344, § 5, p. 998; am. 1973, ch. 89, § 2, p. 146; am. 1977, ch. 300, § 2, p. 838; am. 1980, ch. 264, § 11, p. 682; am. 1982, ch. 296, § 1, p. 755; am. 1989, ch. 57, § 9, p. 78; am. 1993, ch. 119, § 4, p. 297; am. 1998, ch. 1, § 87, p. 3; am. 2001, ch. 37, § 1, p. 68; am. 2010, ch. 114, § 5, p. 233.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 114, in the section heading, and added "limitation of actions"; and rewrote subsections (3) through (6) to the extent that a detailed comparison is impracticable.

Effective Dates.

Section 7 of S.L. 2010, ch. 114 declared an emergency. Approved March 25, 2010.

JUDICIAL DECISIONS

ANALYSIS

Evidence.
Evidentiary hearing.
Fair hearing.
Immunity.
Limitations.
New evidence.
Rehearing.
Service by mail.

Evidence.

Where employer did not request a new evidentiary hearing, and did not provide the industrial commission with any grounds to believe that the interests of justice would require one, commission was within its discretion to conduct a de novo review of the record before the appeals examiner and to affirm the employer's failure to provide nonconclusory testimony, or other evidence, establishing misconduct on the part of a terminated employee. Flowers v. Shenango Screenprinting, Inc., 150 Idaho 295, 246 P.3d 668 (2010).

Evidentiary Hearing.

Industrial commission did not abuse its discretion in denying an evidentiary hearing requested by the claimant, where the claimant, who was found to have intentionally recorded a meeting with an investigator in violation of an agreement with the investigator, asserted that the device used to record the meeting was central to her claim that she did not engage in any misconduct, but she never explained why the operation of the tape recorder could not be explained in writing or by offering the operation manual as an exhibit for the hearing examiner. Chapman v. NYK Line N. Am., Inc., 147 Idaho 178, 207 P.3d 154 (2009).

Fair Hearing.

Where claimant failed to report the weekly earnings she received as a server at a brewery pub, the industrial commission of the state of Idaho determined that she willfully underreported her weekly income while receiving unemployment benefits. Claimant was not denied due process of law during the appeal from the claims examiner to the industrial commission; claimant was given an opportunity to present evidence to the claims examiner and did not request a hearing before the industrial commission to present additional evidence. Cox v. Hollow Leg Pub & Brewery, 144 Idaho 154, 158 P.3d 930 (2007).

Immunity.

Under subsection (7), the determination of whether to consider additional evidence from the parties is in the commission's sole discretion, and that determination shall not be overturned absent an abuse of discretion. Hopkins v. Pneumotech, Inc., 152 Idaho 611, 272 P.3d 1242 (2012).

Limitations.

Where the Idaho department of labor specifically had the ability to redetermine eligibility of the employee's unemployment insurance benefits, despite a determination having become final for lack of an appeal, it was clear

that the department was not bound by the fourteen-day appeal provision of this section; however, the department had no jurisdiction to make a redetermination under this section when more than one year had passed after the original determination. Henderson v. Eclipse Traffic Control & Flagging, Inc., 147 Idaho 628, 213 P.3d 718 (2009).

New Evidence.

In appeal of denial of unemployment benefits, industrial commission properly refused to hear new evidence not presented to original examiner, where the applicant failed to allege any reason in his motion for reconsideration regarding why the evidence was not presented to the examiner. Slaven v. Road to Recovery, 143 Idaho 483, 148 P.3d 1229 (2006).

Assuming that an employee possessed new evidence of discrimination that was unavailable at the time of her hearing before the appeals examiner — and that the industrial commission thus erred by not addressing the employee's argument that she had good cause to quit her job due to such discrimination — the commission's decision to deny unemployment benefits nonetheless had to be affirmed because the employee did not meet the burden of demonstrating that she had explored viable options prior to leaving her employment. Higgins v. Larry Miller Subaru-Mitsubishi, 145 Idaho 1, 175 P.3d 163 (2007).

Once an employee, who seeks to introduce new evidence in an appeal to the industrial commission, provides an explanation of why the proposed evidence was not presented before the appeals examiner, the commission must exercise its discretion and review the matter to determine whether the interests of justice require the presentation of the additional evidence. Simpson v. Trinity Mission Health & Rehab of Midland L.P., 150 Idaho 154, 244 P.3d 1240 (2010).

Where the commission possessed substantial and competent evidence to address the issue of causation with medical records and findings of four doctors, it did not err by denying claimant's motion for reconsideration to present additional evidence Gomez v. Dura Mark, Inc., 152 Idaho 597, 272 P.3d 569 (2012).

Rehearing.

The commission properly denied an employer's request for a new hearing, in which the employer specifically asserted that service of a compact disc of the initial hearing did not provide it with sufficient notice that the seven-day period for requesting a new hearing was triggered: given the notice provided, the employer had ample opportunity to defend its interests at the initial hearing before the appeals examiner. Hopkins v. Pneumotech, Inc., 152 Idaho 611, 272 P.3d 1242 (2012).

Service by Mail.

Under subsection (6), an employer's notice of appeal, mailed on the afternoon of the 14th day following service of the appeals examiner's decision on the employer, was not timely served upon the Idaho industrial commission, where the employer's mailing bore a dated postage-meter mark but no USPS postmark. Because of their inherent unreliableness, postage-meter meter marks are not substitutes for actual postmarks. Smith v. Idaho Dep't of Labor, 148 Idaho 72, 218 P.3d 1133 (2009).

Cited in: Obenchain v. McAlvain Constr., Inc., 143 Idaho 56, 137 P.3d 443 (2006).

72-1369. Overpayments, civil penalties and interest — Collection and waiver. — (1) Any person who received benefits to which he was not entitled under the provisions of this chapter or under an unemployment insurance law of any state or of the federal government shall be liable to repay the benefits and the benefits shall, for the purpose of this chapter, be considered to be overpayments.

(2) Civil penalties. The director shall assess the following monetary penalties for each determination in which the claimant is found to have made a false statement, misrepresentation, or failed to report a material fact to the department:

(a) Twenty-five percent (25%) of any resulting overpayment for the first determination;

(b) Fifty percent (50%) of any resulting overpayment for the second determination; and

(c) One hundred percent (100%) of any resulting overpayment for the third and any subsequent determination.

(3) Any overpayment, civil penalty and/or interest which has not been

repaid may, in addition to or alternatively to any other method of collection prescribed in this chapter, including the creation of a lien as provided by section 72-1360, Idaho Code, be collected with interest thereon at the rate prescribed in section 72-1360(2), Idaho Code. The director may also file a civil action in the name of the state of Idaho. In bringing such civil actions for the collection of overpayments, penalties and interest, the director shall have all the rights and remedies provided by the laws of this state, and any person adjudged liable in such civil action for any overpayments shall pay the costs of such action. A civil action filed pursuant to this subsection (3) shall be commenced within five (5) years from the date of the final determination establishing liability to repay. Any judgment obtained pursuant to this section shall, upon compliance with the requirements of chapter 19, title 45, Idaho Code, become a lien of the same type, duration and priority as if it were created pursuant to section 72-1360, Idaho Code.

(4) Collection of overpayments and civil penalties.

(a) Overpayments, other than those resulting from a false statement, misrepresentation, or failure to report a material fact by the claimant, which have not been repaid or collected, may, at the discretion of the director, be deducted from any future benefits payable to the claimant under the provisions of this chapter. Such overpayments not recovered within five (5) years from the date of the final determination establishing liability to repay may be deemed uncollectible.

(b) Overpayments resulting from a false statement, misrepresentation, or failure to report a material fact by the claimant which have not been recovered within eight (8) years from the date of the final determination establishing liability to repay may be deemed uncollectible.

(c) The first fifteen percent (15%) of a civil penalty assessed pursuant to subsection (2) of this section shall be paid into the employment security fund created in section 72-1346, Idaho Code, and any additional amounts collected shall be paid into the employment security administrative and reimbursement fund created in section 72-1348, Idaho Code.

(5) The director may waive the requirement to repay an overpayment, other than one resulting from a false statement, misrepresentation, or failure to report a material fact by the claimant, and interest thereon, if:

(a) The benefit payments were made solely as a result of department error or inadvertence and made to a claimant who could not reasonably have been expected to recognize the error; or

(b) Such payments were made solely as a result of an employer misreporting wages earned in a claimant's base period and made to a claimant who could not reasonably have been expected to recognize an error in the wages reported.

(6) Neither the director nor any of his agents or employees shall be liable for benefits paid to persons not entitled to the same under the provisions of this chapter if it appears that such payments have been made in good faith and that ordinary care and diligence have been used in the determination of the validity of the claim or claims under which such benefits have been paid.

(7) The director may, in his sole discretion, compromise any or all of an overpayment, civil penalty in excess of the amount required to be paid into

the employment security fund pursuant to subsection (4)(c) of this section, interest or fifty-two (52) week disqualification assessed under subsections (1) and (2) of this section and section 72-1366(12), Idaho Code, when the director finds it is in the best interest of the department.

History.

1947, ch. 269, § 69, p. 793; am. 1949, ch. 144, § 69, p. 252; am. 1973, ch. 89, § 3, p. 146; am. 1980, ch. 264, § 12, p. 682; am. 1983, ch. 146, § 8, p. 382; am. 1986, ch. 24, § 3, p. 71; am. 1990, ch. 353, § 4, p. 946; am. 1993, ch. 181, § 2, p. 461; am. 1997, ch. 205, § 8, p. 607; am. 1998, ch. 1, § 88, p. 3; am. 1999, ch. 101, § 3, p. 315; am. 2005, ch. 5, § 15, p. 6; am. 2010, ch. 114, § 6, p. 233; am. 2013, ch. 103, § 2, p. 245.

STATUTORY NOTES

Cross References.

Employment security fund, § 72-1346.

Amendments.

The 2010 amendment, by ch. 114, deleted the last sentence in paragraph (5)(b), which read: "The director, in his sole discretion, may also compromise a civil penalty assessed under subsection (2) of this section and/or interest"; and added subsection (7).

The 2013 amendment, by ch. 103, added "and civil penalties" at the end of the introductory paragraph in subsection (4); added paragraph (4)(c); and inserted "in excess of the amount required to be paid into the employment security fund pursuant to subsection (4)(c) of this section" in subsection (7).

Effective Dates.

Section 7 of S.L. 2010, ch. 114 declared an emergency. Approved March 25, 2010.

Section 4 of S.L. 2013, ch. 103 provided: "Sections 1 and 2 of this act shall be in force and effect on and after October 22, 2013, and Section 3 of this act shall be in full force and effect on and after July 1, 2013."

JUDICIAL DECISIONS

ANALYSIS

Jurisdiction.
Repayment required.

Jurisdiction.

This section does not provide an administrative procedure to recover an overpayment of unemployment insurance benefits. Henderson v. Eclipse Traffic Control & Flagging, Inc., 147 Idaho 628, 213 P.3d 718 (2009).

Repayment Required.

Where claimant failed to report the weekly earnings she received as a server at a brewery pub for eighteen weeks, the industrial commission determined that she willfully underreported her weekly income for eighteen of the twenty-one weeks she was receiving benefits and that she was ineligible for benefits for those eighteen weeks and for fifty-two weeks following that determination. Claimant was required to pay $5,850.00 in overpayments and a penalty of $1,462.50; she was not entitled to a waiver of the penalty. Cox v. Hollow Leg Pub & Brewery, 144 Idaho 154, 158 P.3d 930 (2007).

Claimant was ineligible for a waiver of the requirement to repay benefits under this section, because his requirement to repay was due to his failure to report a material fact, part-time employment and the wages therefrom, to the department of labor. McNulty v. Sinclair Oil Corp., 152 Idaho 582, 272 P.3d 554 (2012).

72-1370. Distribution of benefit payments upon death.

JUDICIAL DECISIONS

Substitution of Party.

Where a party dies while his appeal is pending and no notification of substitution of party is filed, the appellate court has the discretion, under Idaho Appellate Rule 7, either to consider the merits of the appeal or to dismiss the appeal. Dypwick v. Swift Transp. Co., 147 Idaho 347, 209 P.3d 644 (2009).

72-1372. Civil penalties. — (1) The following civil penalties shall be assessed by the director:

(a) If a determination is made finding that an employer willfully filed a false report, a monetary penalty equal to one hundred percent (100%) of the amount that would be due if the employer had filed a correct report or two hundred fifty dollars ($250), whichever is greater, shall be added to the liability of the employer for each quarter for which the employer willfully filed a false report. For the purposes of this section, a false report includes, but is not limited to, a report for a period wherein an employer pays remuneration for personal services which meets the definition of "wages" under section 72-1328, Idaho Code, and the payment is concealed, hidden, or otherwise not reported to the department.

(b) If a determination is made finding that an employer willfully failed to file the employer's quarterly unemployment insurance tax report when due, the director shall assess a monetary penalty equal to:

(i) Seventy-five dollars ($75.00) or twenty-five percent (25%) of the amount that would be due if the employer had filed a timely quarterly report, whichever is greater, if the employer had not been found in any previous determination to have willfully failed to file a timely quarterly report for any of the sixteen (16) preceding consecutive calendar quarters; or

(ii) One hundred fifty dollars ($150) or fifty percent (50%) of the amount that would be due if the employer had filed a timely quarterly report, whichever is greater, if the employer had been found in any previous determination to have willfully failed to file a timely quarterly report for no more than one (1) of the sixteen (16) preceding consecutive calendar quarters; or

(iii) Two hundred fifty dollars ($250) or one hundred percent (100%) of the amount that would be due if the employer had filed a timely quarterly report, whichever is greater, if the employer had been found in any previous determination or determinations to have willfully failed to file a timely quarterly report for two (2) or more of the sixteen (16) preceding consecutive calendar quarters.

(c) If a determination is made finding that an employer, or any officer or agent or employee of the employer with the employer's knowledge, willfully made a false statement or representation or willfully failed to report a material fact when submitting facts to the department concerning a claimant's separation from the employer, a penalty in an amount equal to ten (10) times the weekly benefit amount of such claimant shall be added to the liability of the employer.

(d) If a determination is made finding that an employer has induced, solicited, coerced or colluded with an employee or former employee to file a false or fraudulent claim for benefits under this chapter, a penalty in an amount equal to ten (10) times the weekly benefit amount of such employee or former employee shall be added to the liability of the employer.

(e) If a determination is made finding that an employer failed to complete and submit an Idaho business registration form when due, as required by

section 72-1337(1), Idaho Code, a penalty of five hundred dollars ($500) shall be assessed against the employer.

(f) For purposes of paragraphs (c) and (d) of this subsection (1), the term "weekly benefit amount" means the amount calculated pursuant to section 72-1367(2), Idaho Code.

(g) If a determination is made finding that a person has made any unauthorized disclosure of employment security information in violation of the provisions of chapter 3, title 9, Idaho Code, or section 72-1342, Idaho Code, or rules promulgated thereunder, a penalty of five hundred dollars ($500) for each act of unauthorized disclosure shall be assessed against the person.

(h) If a determination is made finding that a professional employer failed to submit a separate quarterly wage report for each client as required in section 72-1349B(4), Idaho Code, the director shall assess a monetary penalty equal to one hundred dollars ($100) for each client not separately reported by the professional employer; provided that the maximum penalty for any quarter shall not exceed five thousand dollars ($5,000).

(2) At the discretion of the director, the department may waive all or any part of the penalties imposed pursuant to subsection (1) of this section if the employer shows to the satisfaction of the director that it had good cause for failing to comply with the requirements of this chapter and rules promulgated thereunder.

(3) Determinations imposing civil penalties pursuant to this section shall be served in accordance with section 72-1368(5), Idaho Code. Penalties imposed pursuant to this section shall be due and payable twenty (20) days after the date the determination was served unless an appeal is filed in accordance with section 72-1368, Idaho Code, and rules promulgated thereunder. Such appeals shall be conducted in accordance with section 72-1368, Idaho Code, and rules promulgated thereunder.

(4) Civil penalties imposed by this section shall be in addition to any other penalties authorized by this chapter. The provisions of this chapter that apply to the collection of contributions, and the rules promulgated thereunder, shall also apply to the collection of penalties imposed pursuant to this section. Amounts collected pursuant to this section shall be paid into the state employment security administrative and reimbursement fund as established by section 72-1348, Idaho Code.

History.

I.C., § 72-1372, as added by 2005, ch. 5, § 16, p. 6; am. 2007, ch. 64, § 1, p. 157; am. 2008, ch. 44, § 5, p. 116; am. 2008, ch. 99, § 3, p. 276; am. 2011, ch. 117, § 1, p. 326.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 64, throughout subsection (1), inserted "a determination is made finding that"; in subsection (1)(a), substituted "willfully file a false report, a monetary penalty" for "willfully fails to file any report required by the director or files a false report, a penalty" and "employer willfully filed a false report" for "employer failed to file a report or filed a false report"; added subsection (1)(b), and made related redesignations; and in subsection (1)(e), inserted "when due."

This section was amended by two 2008 acts which appear to be compatible and have been compiled together.

The 2008 amendment, by ch. 44, inserted "or colluded with" in paragraph (1)(d).

The 2008 amendment, by ch. 99, added paragraph (1)(g); and added the internal reference in subsection (2).

The 2011 amendment, by ch. 117, added paragraph (1)(h) and substituted "subsection (1) of this section" for "subsections (1)(a) through (1)(f) of this section" in subsection (2).

Effective Dates.

Section 2 of S.L. 2007, ch. 64 declared an emergency. Approved March 13, 2007.

72-1374. Unauthorized disclosure of information. — If any of the following persons, in violation of the provisions of chapter 3, title 9, Idaho Code, or section 72-1342, Idaho Code, or rules promulgated thereunder, makes any unauthorized disclosure of employment security information, each act of unauthorized disclosure shall constitute a separate misdemeanor:

(1) Any employee of the department;

(2) Any employee or member of the commission;

(3) Any third party or employee thereof who has obtained employment security information pertaining to a person with the written, informed consent of that person;

(4) Any public official who has obtained employment security information for use in the performance of official duties; or

(5) Any person who has obtained employment security information through means that violate the provisions of chapter 3, title 9, Idaho Code, or this chapter, or rules promulgated thereunder.

History.

1947, ch. 269, § 74, p. 793; am. 1949, ch. 144, § 74, p. 252; am. 1990, ch. 213, § 110, p. 480; am. 1998, ch. 1, § 92, p. 3; am. 2008, ch. 99, § 4, p. 277.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 99, rewrote the section, which formerly read: "If any employee or member of the commission or any employee of the department, in violation of the provisions of chapter 3, title 9, Idaho Code, makes any disclosure of information obtained from any employer or individual in the administration of this chapter, each unauthorized disclosure shall constitute a separate misdemeanor."

PART III

CHAPTER 15

COMMISSION FOR REAPPORTIONMENT

SECTION.
72-1502. Members.
72-1504. Compensation.
SECTION.
72-1506. Criteria governing plans.
72-1507. Expenses of commission.

72-1501. Commission for reapportionment.

JUDICIAL DECISIONS

Revised Plan.

Legislative redistricting plan divided more counties than necessary to comply with the equal protection requirements of the four-

teenth amendment. Thus, the plan violated Idaho Const., art. III, § 5 and § 72-1506(5) and was invalid, making it necessary for a revised plan to be adopted pursuant to subsection (2) of this section. Twin Falls County v. Idaho Comm'n on Redistricting, 152 Idaho 346, 271 P.3d 1202 (2012).

72-1502. Members. — The president pro tempore of the senate, the speaker of the house of representatives, and the minority leaders of the senate and the house of representatives shall each designate one (1) member of the commission and the state chairmen of the two (2) largest political parties, determined by the vote cast for governor in the last gubernatorial election, shall each designate one (1) member of the commission. Appointing authorities should give consideration to achieving geographic representation in appointments to the commission. If an appointing authority does not select the members within fifteen (15) calendar days following the secretary of state's order to form the commission, such members shall be appointed by the supreme court.

Should a vacancy on the commission occur during the tenure of a commission, the secretary of state shall issue an order officially recognizing such vacancy. The vacancy shall be filled by the original appointing authority within fifteen (15) days of the order. Should the original appointing authority fail to make the appointment within fifteen (15) days, the vacancy shall be filled by the supreme court.

No person may serve on the commission who:

(1) Is not a registered voter of the state at the time of selection; or

(2) Is or has been within one (1) year a registered lobbyist; or

(3) Is or has been within two (2) years prior to selection an elected official or elected legislative district, county or state party officer. The provisions of this subsection do not apply to the office of precinct committeeperson.

A person who has served on a commission for reapportionment shall be precluded from serving in either house of the legislature for five (5) years following such service on the commission and shall be precluded from serving on a future commission for reapportionment unless the commission is reconstituted because a court of competent jurisdiction has invalidated a plan of the commission and the commission is required to meet to complete a reapportionment or redistricting plan. This limitation on serving on a future commission for reapportionment shall apply on and after January 1, 2001.

History.

I.C., § 72-1502, as added by 1996, ch. 175, § 1, p. 561; am. 2009, ch. 252, § 1, p. 770.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 252, in the last paragraph, in the first sentence, added the language beginning "and shall be precluded from serving on a future commission" and added the last sentence.

Compiler's Notes.

Section 3 of S.L. 2009, ch. 252 provided: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

72-1504. Compensation. — Members of the commission shall receive an honorarium of seventy-five dollars ($75.00) per day for each day spent in the performance of their official duties and shall be reimbursed for travel expenses and food and lodging, subject to the limits provided by the board of examiners in section 67-2008, Idaho Code. Payment of an honorarium as provided in this section shall not be considered salary as defined in section 59-1302(31), Idaho Code.

History.
I.C., § 72-1504, as added by 1996, ch. 175, § 1, p. 561; am. 2010, ch. 224, § 1, p. 500.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 224, rewrote the section, providing an honorarium to members of the reapportionment committee.

72-1506. Criteria governing plans. — Congressional and legislative redistricting plans considered by the commission, and plans adopted by the commission, shall be governed by the following criteria:

(1) The total state population as reported by the U.S. census bureau, and the population of subunits determined therefrom, shall be exclusive permissible data.

(2) To the maximum extent possible, districts shall preserve traditional neighborhoods and local communities of interest.

(3) Districts shall be substantially equal in population and should seek to comply with all applicable federal standards and statutes.

(4) To the maximum extent possible, the plan should avoid drawing districts that are oddly shaped.

(5) Division of counties shall be avoided whenever possible. In the event that a county must be divided, the number of such divisions, per county, should be kept to a minimum.

(6) To the extent that counties must be divided to create districts, such districts shall be composed of contiguous counties.

(7) District boundaries shall retain the local voting precinct boundary lines to the extent those lines comply with the provisions of section 34-306, Idaho Code. When the commission determines, by an affirmative vote of at least five (5) members recorded in its minutes, that it cannot complete its duties for a legislative district by fully complying with the provisions of this subsection, this subsection shall not apply to the commission or legislative redistricting plan it shall adopt.

(8) Counties shall not be divided to protect a particular political party or a particular incumbent.

(9) When a legislative district contains more than one (1) county or a portion of a county, the counties or portion of a county in the district shall be directly connected by roads and highways which are designated as part of the interstate highway system, the United States highway system or the state highway system. When the commission determines, by an affirmative vote of at least five (5) members recorded in its minutes, that it cannot complete its duties for a legislative district by fully complying with the

provisions of this subsection, this subsection shall not apply to the commission or legislative redistricting plan it shall adopt.

History.
I.C., § 72-1506, as added by 1996, ch. 175, § 1, p. 561; am. 2009, ch. 252, § 2, p. 770.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 252, in subsection (5), in the first sentence, substituted "shall be avoided" for "should be avoided," and deleted the second sentence, which read: "Counties should be divided into districts not wholly contained within that county only to the extent reasonably necessary to meet the requirements of the equal population principle"; in subsection (7), substituted "shall retain" for "should retain," deleted "as far as practicable" following "shall retain," and added the last sentence; and added subsection (9).

Compiler's Notes.
Section 3 of S.L. 2009, ch. 252 provided: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

JUDICIAL DECISIONS

Division of Counties.
Legislative redistricting plan divided more counties than necessary to comply with the equal protection requirements of the fourteenth amendment. Thus, the plan violated Idaho Const., art. III, § 5 and this section and was invalid, making it necessary for a revised plan to be adopted pursuant to § 72-1501(2). Twin Falls County v. Idaho Comm'n on Redistricting, 152 Idaho 346, 271 P.3d 1202 (2012).

72-1507. Expenses of commission. — The council shall prepare and submit a budget for the expenses of the commission, including staff, equipment, meetings, salary and expense reimbursement of members, for consideration by the legislature not later than the session held in a year ending in nine (9) preceding the convening of a commission.

History.
I.C., § 72-1507, as added by 1996, ch. 175, § 1, p. 561; am. 2009, ch. 52, § 12, p. 136.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 52, rewrote the section catchline, which formerly read: "Staff"; and deleted the first sentence, which read: "The legislative council is directed to furnish such secretarial and other staff assistance as the commission may require in the performance of its duties."

Compiler's Notes.
S.L. 2009, Chapter 52 became law without the signature of the governor, effective July 1, 2009.

CHAPTER 16

STATE DIRECTORY OF NEW HIRES

SECTION.
72-1603. Definitions.

72-1603. Definitions. — As used in this chapter:

(1) "Date of hire" or "date of rehire" means the actual commencement of employment of an employee for wages or other remuneration.

(2) "Department" means the Idaho department of labor.

(3) "Director" means the director of the Idaho department of labor.

(4) "Employee" means an individual who is an employee within the meaning of 26 U.S.C. 3401. "Employee" does not include an employee of a federal or state agency performing intelligence or counterintelligence functions, if the head of such agency has determined that reporting information with respect to the employee pursuant to this chapter could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(5) "Employer" has the meaning given such term in 26 U.S.C. 3401(d) and includes labor organizations and governmental entities, except for any department, agency or instrumentality of the United States. The term "employer" does not include a multistate employer who has notified the United States secretary of health and human services in writing that it will transmit new hire reports magnetically or electronically to a state other than Idaho.

(6) "Labor organization" shall have the meaning given such term in 29 U.S.C. 152(5), and includes any entity, also known as a "hiring hall," which is used by the organization and an employer to carry out requirements described in 29 U.S.C. 158(f)(3) or an agreement between the organization and the employer.

(7) "Rehire" means to reemploy an individual who was laid off, separated, furloughed, granted leave without pay or terminated from employment at least sixty (60) consecutive days prior to reemployment.

History.
I.C., § 72-1603, as added by 1997, ch. 340, § 1, p. 1016; am. 2013, ch. 103, § 3, p. 245.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 103, substituted "sixty (60) consecutive days" for "twelve (12) months" in subsection (7).

Effective Dates.
Section 4 of S.L. 2013, ch. 103 provided: "Sections 1 and 2 of this act shall be in force and effect on and after October 22, 2013, and Section 3 of this act shall be in full force and effect on and after July 1, 2013."

TITLE 73
GENERAL CODE PROVISIONS

CHAPTER.
1. Construction of Statutes, §§ 73-108C, 73-113, 73-114, 73-114A, 73-121.

CHAPTER 1
CONSTRUCTION OF STATUTES

SECTION.
73-108C. Idaho day.
73-113. Construction of words and phrases.
73-114. Statutory terms defined.
73-114A. Legislative intent on respectful language.
73-121. English the official state language.

73-101. Codes not retroactive.

JUDICIAL DECISIONS

Sex Offender Registration.

Although convicted sex offender contended that applying a 2009 amendment to the sex offender registration law to him violated this section, the offender did not contend that applying the amendment to him would violate any constitutional provision. Therefore, the district court did not err in dismissing his petition to be exempted from the duty to register as a sex offender Bottum v. Idaho State Police, 154 Idaho 182, 296 P.3d 388 (2013).

Cited in: Wheeler v. Idaho Dep't of Health & Welfare, 147 Idaho 257, 207 P.3d 988 (2009); State v. Lee, 153 Idaho 559, 286 P.3d 537 (2012).

73-108C. Idaho day. — March 4 shall be designated as Idaho day. If March 4 falls on a Sunday, the following Monday, March 5, shall be Idaho day; and if March 4 falls on a Saturday, the preceding Friday, March 3, shall be Idaho day. The governor of the state of Idaho shall issue a proclamation each year marking Idaho day. The president pro tempore of the senate and the speaker of the house of representatives shall conduct appropriate ceremonies and programs on Idaho day to honor Idaho's heritage. The Idaho state historical society shall conduct appropriate activities and be encouraged to create exhibitions to commemorate Idaho day. The people of Idaho shall be encouraged to display the Idaho and United States flags on Idaho day. Idaho day shall not constitute a reason to close state and political subdivision offices.

History.

I.C., § 73-108C, as added by 2014, ch. 31, § 2, p. 46.

STATUTORY NOTES

Cross References.

Idaho state historical society, § 67-4123 et seq.

Legislative Intent.

Section 1 of S.L. 2014, ch. 31 provided: "Legislative Intent. President Abraham Lin-

coln, having signed the congressional act creating the Idaho Territory on March 4, 1863, it is the intent of the Legislature to recognize March 4 as IDAHO DAY, through which the people of Idaho may yearly celebrate the rich history, cultural diversity, unique beauty and boundless resources of the State of Idaho and thereby gain a renewed sense of courage and confidence for the future. Throughout its one hundred fifty year history, Idaho has been the birthplace and home of remarkable men and women who have distinguished themselves nationally and internationally in the fields of law, literature, music, the arts, athletics, philanthropy, politics and even space exploration. The same combination of adventure, ambition, industry, innovation and enterprise that led to Idaho's founding has created a cradle for entrepreneurs, innovators and visionaries. Their work has had a global reach and helped create the Panama Canal, Hoover Dam, the Chunnel, potato chips and computer memory chips, the supermarket, the engineering of wood products, farm machinery and locomotives, the laser printer and enough patents to rank Idaho among the nation's most prominent intellectual incubators. It is the purpose of this act to provide the mechanism through which state and local agencies of government, historical societies, schools, colleges and universities, Indian tribes, service organizations, clubs, the media and Idaho citizens in general can educate others about Idaho, her culture, her resources, her history and her greatness."

73-113. Construction of words and phrases. — (1) The language of a statute should be given its plain, usual and ordinary meaning. Where a statute is clear and unambiguous, the expressed intent of the legislature shall be given effect without engaging in statutory construction. The literal words of a statute are the best guide to determining legislative intent.

(2) If a statute is capable of more than one (1) conflicting construction, the reasonableness of the proposed interpretations shall be considered, and the statute must be construed as a whole. Interpretations which would render the statute a nullity, or which would lead to absurd results, are disfavored.

(3) Words and phrases are construed according to the context and the approved usage of the language, but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, are to be construed according to such peculiar and appropriate meaning or definition.

History.
C.C.P. 1880, § 12; R.S., § 15; reen. R.C., § 15; reen. C.L. 500:15; C.S., § 9455; I.C.A., § 70-113; am. 2013, ch. 335, § 1, p. 873.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 335, designated the extant provisions of the section as subsection (3) and added subsections (1) and (2).

73-114. Statutory terms defined. — (1) Unless otherwise defined for purposes of a specific statute:

(a) Words used in these compiled laws in the present tense, include the future as well as the present;

(b) Words used in the masculine gender, include the feminine and neuter;

(c) The singular number includes the plural and the plural the singular;

(d) The word "person" includes a corporation as well as a natural person;

(e) Writing includes printing;

(f) Oath includes affirmation or declaration, and every mode of oral statement, under oath or affirmation, is embraced by the term "testify," and every written one in the term "depose";

(g) Signature or subscription includes mark, when the person cannot write, his name being written near it, and witnessed by a person who writes his own name as a witness.

(2) The following words have, in the compiled laws, the signification attached to them in this section, unless otherwise apparent from the context:

(a) "Intellectual disability" means significantly subaverage general intellectual functioning that is accompanied by significant limitations in adaptive functioning in at least two (2) of the following skill areas: communication, self-care, home living, social or interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health and safety. The onset of significantly subaverage general intelligence functioning and significant limitations in adaptive functioning must occur before age eighteen (18) years.

(b) "Month" means a calendar month, unless otherwise expressed.

(c) "Personal property" includes money, goods, chattels, things in action, evidences of debt and general intangibles as defined in the uniform commercial code — secured transactions.

(d) "Property" includes both real and personal property.

(e) "Real property" is coextensive with lands, tenements and hereditaments, possessory rights and claims.

(f) "Registered mail" includes certified mail.

(g) "State," when applied to the different parts of the United States, includes the District of Columbia and the territories; and the words "United States" may include the District of Columbia and territories.

(h) "Will" includes codicils.

(i) "Writ" signifies an order or precept in writing, issued in the name of the people, or of a court or judicial officer, and the word "process," a writ or summons issued in the course of judicial proceedings.

History.

C.C.P. 1880, § 13; R.S., § 16; reen. R.C., § 16; reen. C.L. 500:16; C.S., § 9456; reen. 1899, ch. 5, § 1, p. 147; reen. R.C., § 5149; reen. C.L. 500:16; C.S., § 9456; I.C.A., § 70-114; am. 1959, ch. 16, § 1, p. 36; am. 1967, ch. 272, § 31, p. 745; am. 2010, ch. 235, § 72, p. 542.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 235, redesignated the subsections; and added paragraph (2)(a).

73-114A. Legislative intent on respectful language. — (1) It is the intent of the legislature that the Idaho Code be amended to remove certain archaic language related to the condition of individuals. Certain terms, such as "idiots," "handicap," "retarded," "lunatic" and "deficient," when applied to individuals, have outlived their usefulness. The term "intellectual disability" as used in this act is intended to replace the term "mental retardation" as previously used in the Idaho Code.

(2) The legislature intends that the emphasis should be on people first, rather than on archaic labels. Therefore, any new or amended section of the

Idaho Code should incorporate more modern and people first language when referring to the condition of individuals, as used in this act.

(3) The legislature further intends that rules promulgated under the administrative procedure act, chapter 52, title 67, Idaho Code, after the effective date of this act, should incorporate more modern and people first language when referring to the condition of individuals, as used in this act. Where appropriate and when the use of more modern and people first language will not substantively change the meaning of a rule, the rules coordinator is encouraged to use the authority provided for in section 67-5202(2), Idaho Code, to replace archaic language in the administrative code with more modern and people first language, as used in this act.

(4) This act's substitution of more modern and people first language in place of archaic language when referring to the condition of individuals shall not change the substantive interpretation of the amended Idaho Code sections or the case law interpreting those sections.

History.
I.C., § 73-114A, as added by 2010, ch. 235, § 73, p. 542.

STATUTORY NOTES

Compiler's Notes.
The term "this act" in subsections (3) and (4) refers to S.L. 2010, ch. 235, which is codified throughout the Idaho Code.

73-116. Common law in force.

JUDICIAL DECISIONS

ANALYSIS

Felony murder rule.
Immunity.
Survival of actions.

Felony Murder Rule.

Where a third party grabbed defendant's gun during a kidnapping and shot the victim, the district court committed reversible error by relying on the proximate-cause theory — rather than the agency theory — when instructing the jury on felony murder under § 18-4001 and subsection (d) of § 18-4003. The instruction allowed the jury to find defendant liable for any killing that occurred contemporaneously with the kidnapping, without regard to whether defendant and the shooter were engaged in a common scheme or plan to kidnap the victim. Idaho's felony-murder statute must be viewed through the lens of the English common law under this section, which was that the felony-murder rule applied only to co-conspirators acting in concert in furtherance of the common plan or scheme to commit the underlying felony. State v. Pina, 149 Idaho 140, 233 P.3d 71 (2010), overruled on other grounds, Verska v. St. Alphonsus Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

Immunity.

Where forms containing corrections officers' personal information were disclosed to an inmate during criminal proceeding discovery, the prosecutor and the county were immune from the officers' state law claims because responding to discovery was a quasi-judicial function. Nation v. State, 144 Idaho 177, 158 P.3d 953 (2007).

Since Idaho recognizes the common law when it is not "repugnant to, or inconsistent with" constitutional or state law, absolute prosecutorial immunity is recognized for activities intimately associated with the judicial phase of the criminal process. Nation v. State, 144 Idaho 177, 158 P.3d 953 (2007).

Survival of Actions.

Claims of medical expenses, lost income, lost earning capacity, emotional distress, anguish, and pain and suffering were personal to decedent and did not fall under any statutory exceptions; thus, applying the common

law, all claims abated upon the decedent's death. Estate of Shaw v. Dauphin Graphic Machs., Inc., 392 F. Supp. 2d 1230 (D. Idaho 2005), rev'd in part, 240 Fed. Appx. 177 (9th Cir. 2007).

The abatement rule holds that in the absence of a legislative enactment addressing the survivability of a claim, the common law rules govern. Under the common law, claims arising out of contracts generally survive the death of the claimant, while those sounding in pure tort abate. Bishop v. Owens, 152 Idaho 617, 272 P.3d 1247 (2012).

Cited in: City of Coeur d'Alene v. Mackin (In re Ownership of Sanders Beach), 143 Idaho 443, 147 P.3d 75 (2006); Craig v. Gellings, 148 Idaho 192, 219 P.3d 1208 (Ct. App. 2009).

73-121. English the official state language. — (1) English is hereby declared to be the official language of the state of Idaho.

(2) Except as provided in this section, the English language is the sole language of the government.

(3) Except as provided in subsection (4) of this section, any document, certificate or instrument required to be filed, recorded or endorsed by any officer of this state, or of any county, city or district in this state, shall be in the English language or shall be accompanied by a certified translation in English and all transactions, proceedings, meetings or publications issued, conducted or regulated by, or on behalf of, or representing the state of Idaho, or any county, city or other political subdivision in this state shall be in the English language.

(4) Language other than English may be used when required:

(a) By the United States Constitution, the Idaho Constitution, federal law or federal regulation;

(b) By law enforcement or public health and safety needs;

(c) By public schools according to the rules promulgated by the state board of education pursuant to subsection (6) of this section;

(d) By the public postsecondary educational institutions to pursue educational purposes;

(e) To promote and encourage tourism and economic development, including the hosting of international events;

(f) To change the use of non-English terms of art, phrases, proper names or expressions included as part of communication otherwise in English; and

(g) By libraries to:

(i) Collect and promote foreign language materials; and

(ii) Provide foreign language services and activities.

(5) Unless exempted by subsection (4) of this section, all state funds appropriated or designated for the printing or translation of materials or the provision of services or information in a language other than English shall be returned to the state general fund.

(a) Each state agency that has state funds appropriated or designated for the printing or translation of materials or the provision of services or information in a language other than English shall:

(i) Notify the state controller that those moneys exist and the amount of those moneys; and

(ii) Return those moneys to the state controller for deposit into the state general fund.

(b) The state controller shall account for those moneys and inform the

legislature of the existence and amount of those moneys at the beginning of the legislature's annual general session.

(6) The state board of education shall make rules governing the use of foreign languages in the public schools that promote the following principles:

(a) Non-English speaking children and adults should become able to read, write and understand English as quickly as possible;

(b) Foreign language instruction should be encouraged;

(c) Formal and informal programs in English as a second language should be initiated, continued and expanded; and

(d) Public schools should establish communication with non-English speaking parents within their systems, using a means designed to maximize understanding when necessary, while encouraging those parents who do not speak English to become more proficient in English.

(7) Nothing in this section shall restrict the rights of governmental employees, private businesses, not-for-profit organizations or private individuals to exercise their right under the first amendment of the United States constitution or section 9, article I, of the Idaho constitution.

History.

I.C., § 73-121, as added by 1986, ch. 282, § 1, p. 705; am. 2007, ch. 254, § 1, p. 758.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 254, rewrote the section catchline, which formerly read: "Certain documents to be in English"; and rewrote the section which formerly read: "Any document, certificate or instrument required to be filed, recorded or endorsed by any officer of this state, or of any county, city or district in this state, shall be in the English language or shall be accompanied by a certified translation in English."

Compiler's Notes.

Section 2 of S.L. 2007, ch. 254 provides: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

CHAPTER 4

FREE EXERCISE OF RELIGION PROTECTED

73-401. Definitions.

JUDICIAL DECISIONS

ANALYSIS

Recognized religious beliefs.
Substantially burden.

Recognized Religious Beliefs.

Defendant's marijuana use was not substantially motivated by a religious belief under Idaho's Free Exercise of Religion Protected Act. Although defendant's testimony linked his marijuana use to legitimate religious beliefs and practices, he used parts of various recognized religions to "meld into a justification for his use of marijuana" and did not establish a link between any recognized

religious beliefs he may have and his marijuana use. State v. White, 152 Idaho 361, 271 P.3d 1217 (Ct. App. 2011).

Possession of marijuana and paraphernalia charges were not subject to dismissal on the basis of defendant's right to religious freedom under the Idaho free exercise of religion protected act. Defendant failed to show his use of marijuana, as a member of a cognitive therapy church, comprised an exercise of "religion" such that it is protected by the act. State v. Cordingley, 154 Idaho 762, 302 P.3d 730 (Ct. App. 2013).

Substantially Burden.

By prohibiting the government from imposing any substantial burden on an inmate's religious exercise unless the burden is justified by a compelling, and not just a legitimate, governmental interest, the Religious Exercises in Land Use and by Institutionalized Persons Act, 42 U.S.C.S. § 2000cc, accords greater protection to an inmate than Idaho's Free Exercise of Religion Protected Act. Hyde v. Fisher, 146 Idaho 782, 203 P.3d 712 (Ct. App. 2009).

73-402. Free exercise of religion protected.

JUDICIAL DECISIONS

ANALYSIS

Federal preemption.
Inmate's rights.
Recognized religious beliefs.

Federal Preemption.

Order from the State of Idaho DOT denying plaintiff's application to renew his driver's license for failure to provide his social security number was upheld because the State of Idaho was required by federal law to record the social security number of all driver's license applicants. Lewis v. DOT, 143 Idaho 418, 146 P.3d 684 (Ct. App. 2006).

Inmate's Rights.

By prohibiting the government from imposing any substantial burden on an inmate's religious exercise unless the burden is justified by a compelling, and not just a legitimate, governmental interest, the Religious Exercises in Land Use and by Institutionalized Persons Act, 42 U.S.C.S. § 2000cc, accords greater protection to an inmate than Idaho's Free Exercise of Religion Protected Act. Hyde v. Fisher, 146 Idaho 782, 203 P.3d 712 (Ct. App. 2009).

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Defendant's marijuana use was not substantially motivated by a religious belief under Idaho's Free Exercise of Religion Protected Act. Although defendant's testimony linked his marijuana use to legitimate religious beliefs and practices, he used parts of various recognized religions to "meld into a justification for his use of marijuana" and did not establish a link between any recognized religious beliefs he may have and his marijuana use State v. White, 152 Idaho 361, 271 P.3d 1217 (Ct. App. 2011).

Denial of defendant's motion to dismiss charges for possession of marijuana and paraphernalia against him on the basis his right to religious freedom under the Idaho free exercise of religion protected act was appropriate, because he failed to show his use of marijuana, as a member of a cognitive therapy church, comprised an exercise of "religion" protected by the act. State v. Cordingley, 154 Idaho 762, 302 P.3d 730 (Ct. App. 2013).